



EMPLOYMENT TRIBUNALS

Claimant: Mr N Atkinson

Respondent: Mr Timothy Lock

Heard at: Leicester **On:** Friday 29 March 2019

Before: Employment Judge Ayre (sitting alone)

Representatives

Claimant: In Person

Respondent: Did Not Attend and was Not Represented

JUDGMENT ON RECONSIDERATION

1. The Judgment dated 30 October 2018 and sent to the parties on 1 November 2018 is revoked.
2. The Tribunal does not have jurisdiction to hear the claim, as it was submitted out of time.

REASONS

1. The claim form was presented to the Tribunal on 12 July 2018. The Respondent did not present a response to the claim, and on 30 October 2018 a Judgment was entered against the Respondent pursuant to Rule 21 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
2. The case was listed for a remedy hearing today. The Claimant attended the hearing in person. The Respondent did not attend and was not represented.

Jurisdiction Issue

1. At the start of the remedy hearing I explained to the Claimant that I had noticed that the claim appeared to have been presented out of time. I asked the Claimant to confirm the date on which his employment terminated, and he said that it had terminated on 18 February 2018, as set out in the claim form. The primary limitation period therefore expired on 17 May 2018.

2. The ACAS Early Conciliation Certificate records that the Claimant started Early Conciliation on 21 May 2018. Early Conciliation ended with the issue of the Certificate on 21 June 2018.

3. I explained to the Claimant that the Tribunal only has jurisdiction to consider his claim if it was presented within 3 months of the date of termination of his employment (plus any time added on for the Early Conciliation process), and that, in order for his claim to be in time, he should have commenced Early Conciliation by 17 May 2018 at the latest. I also explained that the Tribunal would have jurisdiction to consider his claim if I was satisfied that it was not reasonably practicable for him to have presented his claim on time, and that the claim was presented within such further period as I considered reasonable. I invited the Claimant to address me on this issue and to explain why he had not started the Early Conciliation process until 21 May.

4. The Claimant told me that he had been in 'constant communication' with the Respondent trying to resolve matters without the need to recourse to employment tribunals. He had been made a lot of false promises by the Respondent but had taken him at his word. The Claimant also said that he was not aware of the 3 month time limit for issuing proceedings. He had spoken several times to ACAS but had not taken legal advice. He had finally decided to start Early Conciliation on 21 May because he got to 'breaking point' and felt there were no other options.

5. The Claimant then told me that the last contact he had with the Respondent was in March 2018. I asked him what had happened between March and 21 May 2018, and the Claimant said he had tried ringing the Respondent as the Respondent had stopped replying to his text messages. The Respondent had told him he would not communicate with him any more because the Claimant had contacted ACAS.

6. The Claimant's explanation for the delay was, in my view, contradictory. He initially told me he had been in 'constant' communication with the Respondent, but then said he hadn't heard from him between March 2018 and 21 May when he started Early Conciliation. Lack of knowledge of time limits does not, of itself, render it not reasonably practicable for the claim to be presented in time.

7. The Claimant did not persuade me that it was not reasonably practicable for his claim to be presented on time, and accordingly the Tribunal does not have jurisdiction to hear it.

Reconsideration

1. I explained to the Claimant that, in light of my conclusions above, I was proposing to reconsider the judgment dated 30 October 2018 on the grounds that it was necessary in the interests of justice to do so. I invited the Claimant to make representations as to why the original judgment should not be reconsidered.
2. In response the Claimant told me that the Hall where he worked is privately owned, and that throughout his employment by the Respondent his pay had been 'incredibly erratic'. He hadn't pursued matters earlier because he was hoping that matters would be resolved. He had given the Respondent the benefit of the doubt and been 'too nice'. The Claimant knows the Respondent well and understood the Respondent's personal situation.
3. Having considered the Claimant's representations, I concluded that it would be in the interests of justice to revoke the original judgment. The Tribunal does not have jurisdiction to hear this claim as it was presented out of time, and in those circumstances the original judgment cannot stand.
4. I have every sympathy for the Claimant who has, in my view, been very badly treated.

Employment Judge Ayre

Date: 29 March 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE