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EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr D Seho

AND

Oak Capital LLP (In liquidation)

Heard at: London Central

On: 4 April 2019

Before: Employment Judge Burns (Sitting alone)

Representation

For the Claimant: In person

For the Respondent: Did not attend

JUDGMENT

The claim is dismissed.

REASONS

1. This is a Preliminary Hearing to determine whether or not the Tribunal has jurisdiction to entertain this claim for a protective award arising from the admitted failure of the Respondent to carry out any statutory consultation before making a number of employees redundant with immediate effect on 15 August 2017.

2. The time limit for presenting such a claim is set out in Section 189 of the Trade Union and Labour Relations Consolidation Act 1992: a claim of this nature must be presented before the date of the dismissal or within a period of three months beginning with that date or, where the Tribunal is satisfied that it is not reasonably practicable for the complaint to be presented during the period of three months, within such further period as it considers reasonable. The three month period is extended by the period of early ACAS conciliation, provided that this itself is applied for within the three month period.

3. I have heard evidence from the Claimant and read the documents that he has produced by way of written submissions. There is no appearance on behalf of the Respondent.

4. On 15 August 2017, the Claimant and others were called into a board room and told that the Respondent company was closing with immediate effect, that they were being made redundant and that their employment was terminated with immediate effect.

5. A letter was sent out on 23 August 2017, in which ERA Solutions, acting for the administrators, gave some information to the ex-employees about how various sums could be claimed from the company - in particular pay, holiday pay,

redundancy pay and notice pay. No mention was made of any potential entitlement to a protective award.

6. A group of the affected employees (not including the Claimant) instructed a firm of solicitors called Hunters which in September 2017 produced a letter together with a “proforma” for completion and presentation to the administrators. That proforma made express reference to a protective award. The Claimant had received a copy by the end of September/early October 2017 and he filled it in on 16 October 2017 and presented it to the administrators, who however did not pay the protective award.

7. Other colleagues of his, for example Mr Douglas Barr and Ms Yarna Atanasova under Case Number: 2207304/2017 brought claims to the Tribunal within the three month period and succeeded in having an award made in their favour.

8. Other employees in much the same position as the Claimant have brought ET claims but have been ruled out of time. For example on 23 October 2018, Judge Mason in Case Number: 2210710/2018, McCall v Oak LLP dismissed that claim as it had been brought too late and was outside jurisdiction although, in that case, Mr McCall had presented his claim far earlier than Mr Seho has done in the case before me today.

9. Mr Seho is a well-educated and eloquent young man, his speciality is business and mathematics. He is a post-graduate and he was working for a salary of £85,000. He clearly had the resources to get proper legal advice from a solicitor if he wanted to. In the event he was happy for over a year to rely upon second-hand news from colleagues and on hearsay about what ACAS or the CAB had told other people.

10. He was clearly put on notice by October 2017 of the existence of the protective award as a species of entitlement available to employees such as him who had been dismissed without prior consultation, and he had claimed this from the administrators. He could and should have found out within the requisite period after dismissal that it was highly unlikely that the administrators would pay such an award and that he had to apply to the Tribunal within that period.

11. He did not carry out any proper timely research of his own about how to issue an ET claim or about the time limits, though there is abundant information about this on the internet. Ignorance of the law or facts is not a good excuse unless that ignorance is itself reasonable.

12. The Employment Tribunal is well-known, very well-established venue for the enforcement of employment claims. It is the obvious place to present a claim and it is also well-known that most types of employment claim have strict time-limits attached to them. With a minimum effort the Claimant could have found out these facts to the extent that he was ignorant of them.

13. He told me that he was prompted to bring the ET claim, by some remark of the administrators probably around early to mid-October 2018, to the effect

that any claim for a protective award had to be made to the Tribunal, and that he then spent another one or two weeks considering and researching the matter and talking to colleagues before he approached ACAS on 9 November 2018. ACAS issued their certificate on 15 November 2018 and he presented his ET1 4 days later, over one year after the initial three-month period had expired.

14. Mr Seho submits that he was misled by the administrators not flagging up the protective award and how to enforce it through the Tribunal in their early correspondence in 2017. However, there is no duty on the administrator to give legal advice to an ex-employee of the company, and in any event what was written was not misleading.

15. The Claimant submits that the fact that so few of the employees managed to bring claims in time, should allow me to draw some general conclusion about the fact that in this particular instance, it was difficult for claims to be brought. That is a very vague generalised argument which is undermined by the fact that some of the colleagues did manage to claim in time. I have to analyse this case primarily on the facts pertaining to Mr Seho rather than on speculations about the position of other employees.

16. Mr Seho also submits that the time limit is itself very unfair and out-moded and should be changed. If that is so, it is a matter for Parliament. I have to apply the law, I cannot make the law and I certainly have no power other than that set out in Section 189 to extend the time limit.

17. I find that it was reasonably practicable for Mr Seho to claim within the three-month period. In any event, even if I had found that it was not, I would have found the claim was not presented within a reasonable time after 14 November 2017. Therefore, the claim is outside jurisdiction and is dismissed.

Employment Judge Burns

Dated: 11 April 2019

Judgment and Reasons sent to the parties on:

16 April 2019

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For the Tribunal Office