



EMPLOYMENT TRIBUNALS

Claimant: Mr Andrew Friday
Respondents: (1) Mr Tim Farazmand
(2) Mrs Jackie Farazmand

Heard at: Ashford **On:** 21 February 2018

Before: EMPLOYMENT JUDGE CORRIGAN
Sitting Alone

Representation

Claimant: No appearance
Respondents: Mr D Livingstone, Counsel

JUDGMENT having been sent to the parties on 20 March 2018 and written reasons having been requested by the Respondents in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant initially submitted a claim on 27 October 2017 against the Respondents claiming unfair dismissal, holiday pay and unpaid wages. A preliminary hearing was listed to consider what claims the Employment Tribunal has jurisdiction to hear referring to ground 1 of the Response. The issues to be addressed at the preliminary hearing were:
 - 1.1 whether the claim was submitted out of time; and
 - 1.2 whether the Claimant was an employee of the Respondent.
2. In order to decide the time point I had to consider the following:
 - 2.1 What was the effective date of termination?
 - 2.2 Was the claim presented in time?
 - 2.3 If not, should I extend time on the basis that it was not reasonably practicable to present the claim in time?

3. The Claimant had also had to resubmit his claim due to a discrepancy between the Claim and the ACAS certificate but the Respondent's representative agreed the key issue was the date of submission of the original claim.
4. The Claimant did not attend the hearing but did send in written representations, to which I had regard. The Respondent's representative made oral submissions.
5. The Claimant's correspondence cited his reasons for non-attendance as his solicitor not having time to prepare and his feeling unable to attend alone. Rule 47 Employment Tribunals Rules of Procedure provides that prior to proceeding with a hearing in a party's absence the Tribunal shall consider any information available to it, after any enquiries that may be practicable, about the reasons for the party's absence. Pursuant to rule 47 the Tribunal clerk contacted the Claimant to inform the Claimant that a representative is not necessary and many parties attend without representation and that the Tribunal would not be able to hear his evidence if he did not attend. The Claimant was asked whether he was able to attend if granted an adjournment to 12 noon. The Claimant emailed confirmation that he could not attend as he was working and awaiting deliveries. The matter was therefore heard in his absence.
6. The Claimant's claim form initially gave the date of the termination of his employment as 31 July 2017. The Response gave the date as 17 July 2017. The written representations from the Claimant accepted the Claimant last worked on 17 July 2017 and that he did not in the event attend work again after an argument on the phone with Mrs Farazmand on 18 July 2017. The Claimant therefore accepts his effective date of termination was either 17 or 18 July 2017 (applying s97 Employment Rights Act 1996).
7. Normally the deadline for submitting the claim would therefore be either 16 October 2017 or 17 October 2017 (s111 Employment Rights Act 1996). However s207B Employment Rights Act 1996 applies. The Claimant contacted ACAS and commenced early conciliation on 4 September 2017 and received the certificate by email on 12 September 2017. S207B provides that the period from 5 September 2017 and 12 September 2017 is not to be counted in working out the deadline. This gave the Claimant an additional 8 days making the deadline 24 October 2017 or 25 October 2017. There is provision for a longer extension if the original deadline had expired between 4 September 2017 and one month after 12 September 2017 but this does not apply in this case.
8. The Claimant submitted his claim on 27 October 2017 and was therefore at least 2 days late.
9. The Claimant's written representation states that he was told by ACAS that he had until 24 October 2017 but that because he had gone through conciliation the certificate put it on hold for one month. He says he therefore thought he was in plenty of time on 27 October 2017 and that he had checked again with ACAS who said he was still in time. The Claimant's correspondence also suggests he had had legal advice prior to submitting his claim.

10. On the basis of the written representations I do not find that it was not reasonably practicable to submit the claim in time. There is therefore no basis for extending time. The Claimant had been in contact with ACAS and had legal advice. He had been informed of the 24 October 2017 deadline. In the absence of oral evidence from the Claimant explaining what he was told I accept the Respondent's submission that it is unlikely that ACAS gave incorrect advice. Had the Claimant chosen to attend and give evidence about what he had been told the position may have been different but he did not take that opportunity.
11. The claim having been submitted out of time the Tribunal have no jurisdiction to hear the complaint and it was not necessary to consider the Claimant's employment status.

Employment Judge Corrigan
22 May 2018