



EMPLOYMENT TRIBUNALS

Claimant Mr E Ramsden

Respondent: Plasticon UK Limited (in administration)

HELD AT: Leeds

ON: 3 June 2019

BEFORE: Employment Judge Maidment

Representation:

Claimant: In person

Respondent: No attendance or representation

JUDGMENT

1. The claim has been presented outside the statutory time limit but it was not reasonably practicable to present it in time and it has been presented within a further reasonable period.
2. The complaint of failure to comply with Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well-founded.
3. The Respondent shall pay the Claimant remuneration for the protected period of 90 days from 27 March 2018.

REASONS

1. On 29 March 2018 Plasticon UK Limited (“the Company”) went into administration. The workforce was made redundant without any prior consultation. On 23 August 2018, the Tribunal reached a Judgment in the cases of Mr V Novis and others (Case numbers 1805101/2018 and others) upholding

their claims that the Company had failed to comply with its obligations under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A). The Tribunal ordered the Company to pay those Claimants remuneration for the protected period of 90 days from 27 March 2018, which was the date on which the first of the dismissals took effect.

2. After the initial Judgment, the Claimant has presented a claim for a protective award. The Tribunal had to decide whether this were presented within the statutory time limit laid down in Section 189 TULR(C)A. That section states that a Tribunal cannot consider a complaint unless it is presented either before the date on which the last of the dismissals to which the complaint relates takes effect or during the period of three months beginning with that date.
3. The Claimant was notified of his redundancy with immediate effect on 27 March 2018 whilst working on site in Manchester. That meant that any claim for a protective award should have been presented to the Tribunal by 26 June 2018. There are statutory provisions which would extend that time limit if the Claimant had contacted ACAS under the early conciliation procedure by 26 June.
4. If the Tribunal is satisfied that it was not reasonably practicable for a complaint to have been presented within the three-month time limit, the Tribunal can hear the complaint if it has been presented within such further period as the Tribunal considers reasonable.
5. Whether it was reasonably practicable for a complaint to be presented within the three-month time limit is a question of fact and depends upon the circumstances surrounding the timing of the claim by the individual Claimant. The appeal courts have confirmed that the onus is on the Claimant to show that it was not reasonably feasible to present the claim in time (Porter v Bandridge Ltd (1978) ICR 943, Palmer and another v Southend-on-Sea Borough Council (1984) ICR 372).
6. A Claimant may be late in presenting his claim because he was not aware until after the time limit had already expired of his right to bring a claim or the existence of the time limit. The appeal courts have accepted that that may make it not reasonably practicable for him to have presented his claim in time, *but only if* his ignorance of his rights or the time limit was reasonable (Walls Meat Co Ltd v Khan [1978] IRLR 499). If he was unaware because he did not make the enquiries he should reasonably have made about his rights and how to enforce them then he cannot argue that it was not reasonably practicable for him to present his claim in time.

The circumstances of the Claimant's claim

7. At the Hearing the Claimant gave evidence on the circumstances surrounding the timing of his claim.
8. The Claimant was informed he was redundant on 27 March 2018, when he was told over the phone by the Company's Managing Director that the Company as from now did not exist. He left site immediately. The Claimant claimed a statutory redundancy payment from the Government Insolvency Service but he was not aware of his right to claim a protective award for the Company's failure to consult on the redundancies. He was not a union member and did not understand that he had any additional rights.
9. The Claimant concentrated on securing alternative employment which he did together with his brother who had also been employed by the Respondent. He has since worked at a variety of disparate locations with his brother. He first learned about the possibility of a claim for a protective award in the first week of March 2019 when for the first time he happened to be working alongside other former employees of the Respondent in Teesside. They asked him if he had received an email confirming that his entitlements would be paid. The Claimant did not know what his former colleagues were talking about and he only learnt then for the first time about the successful protective award claims.
10. The Claimant contacted ACAS on 7 March and was issued with an early conciliation certificate on 8 March 2019. He presented his claim to the Tribunal on 17 March 2019.
11. The Tribunal accepts that it was not reasonably practicable for the Claimant to present his claim within the initial three-month time limit. He was not aware of the existence of a protective award. This is not an employment right that is as widely known as, for example, the right to claim unfair dismissal or to complain about discrimination. The Tribunal accepts that, until he had the conversation with his former colleagues in March, he could not reasonably be expected to know about his right to bring a claim. The Tribunal also accepts that he then brought his claim within a further reasonable period: he contacted ACAS promptly and soon afterwards lodged his claim with the Tribunal.
12. The Tribunal therefore concludes that it has power to hear the Claimant's claim, and makes a protective award in his favour.

Employment Judge Maidment
Date: 3 June 2019