



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4106981/2019 Preliminary Hearing at Edinburgh on 17 October 2019

Employment Judge: M A Macleod

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Raffaele Grasso

Claimant
Represented by
Ms R Mohamed
Solicitor

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John McMenamin Limited

Respondent
Represented by
Mr V Hart
Scottish Building
Federation

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that the Tribunal has jurisdiction to hear the claimant's claims, which will now proceed to a full hearing on the merits.

REASONS

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1. In this case, the claimant complains that he was unfairly dismissed by the respondent and that they unlawfully deprived him of certain contractual payments to which he was entitled on termination of his employment.

2. The respondent resists all claims made by the claimant.

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3. The case came before the Tribunal in a Preliminary Hearing in order to determine whether or not the Tribunal has jurisdiction to hear the case, on the basis that it is time-barred.

4. Ms Mohamed, newly instructed, appeared for the claimant, and Mr Hart appeared for the respondent.
5. The claimant gave evidence on his own behalf.
6. During the course of the hearing, it became apparent that not all of the information available on the Tribunal's own file or available to the claimant's representative was known to the respondent's representative, and an adjournment took place following the claimant's evidence in order to allow additional documents to be copied and passed to the parties.
7. Those additional documents changed the complexion of the hearing and as a result, certain further submissions were made by the respondent.
8. It is useful to set out the history of the matter, including those facts not previously known to the respondent, in order to illuminate the Tribunal's decision, and then to confirm that decision.
9. The claimant's employment with the respondent ended on or about 18 February 2019.
10. Following, and indeed before, his dismissal, the claimant consulted the Citizens' Advice Bureau in order to take advice as to his rights in the event of his dismissal. The CAB wrote to the respondent (in a letter signed by the claimant) on 14 February 2019 (30) suggesting that if they proceeded with the threatened disciplinary proceedings against him, he would take the case to an Employment Tribunal. He subsequently sought advice from Messrs JK Law, solicitors, who in turn presented his claim to the Employment Tribunal.
11. According to the respondent's understanding, the claim was presented to the Tribunal on 10 July 2019 (1ff).
12. However, Ms Mohamed pointed out that she was in possession of a copy of the claim form which had two date stamps upon it, 20 May 2019 and 12 June 2019, suggesting that the claim was presented on each of those occasions.

13. Accordingly, it is necessary to identify the sequence of events which took place from 20 May 2019.

14. The Tribunal's own administration file, which I held, does not disclose any correspondence prior to the June presentation of the claim. However,
5 Ms Mohamed very helpfully produced a copy of a letter from the Tribunal dated 21 May 2019 addressed to Ms Khalid of JK Law, rejecting the claim on the basis that the information which had not been provided was the "correct early conciliation number as it appears on the early conciliation certificate provided by ACAS".

10 15. That claim form referred to the Early Conciliation Certificate (ECC) number R141151/19/50. Attached to the claim form was the ECC, which bears the number R141151/19/50. The date of receipt by ACAS of EC notification was 3 April 2019, and the date of issue of the ECC was 18 April 2019.

15 16. The name of the respondent was set out in that certificate as "John Mc Me naming Ltd", with the company registration number and address correctly set out.

17. On 11 June 2019, Messrs JK Law wrote to the Tribunal apologising for the delay, explaining that the claimant had a difficulty in obtaining his ECC, but attaching the claim form and paper apart in identical form to the previous
20 version (hence the date stamp of 12 June 2019 applied by the Tribunal).

18. At that point, the claim was rejected again, by letter dated 13 June 2019 by the Tribunal, for the reason that "you have not complied with the requirement to contact ACAS before instituting relevant proceedings". It was said to be defective for the reason that "you have provided an early
25 conciliation number but the name of the respondent on the claim form is different to that on the early conciliation certificate".

19. The difference was between "John McMenamin Ltd" and "John Mc Me naming Ltd".

20. A further attempt was then made to present the claim on 10 July 2019, with
30 reference to the ECC number R141151/19/50, and attaching an ECC with a

different reference number R141381/19/17 (17). However, that ECC confirmed that the notification was received on 4 April 2019, and the certificate was issued by ACAS on 11 April 2019. The prospective respondent was noted as John McMEnamin Ltd (though only with lower case lettering). That claim was not rejected by the Tribunal, except to the extent that it was presented against John McMEnamin as an individual.

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21. Mr Hart, having seen all of these documents, concluded that it was appropriate to make a fresh submission to the Tribunal, in which he said that it was now clear to the respondent that the claim had been presented to the Tribunal within the statutory timescale, but that due to an administrative error, apparently in the hands of ACAS, the claim had had to be rejected because the name of the respondent was not properly recorded on the ECC. He therefore withdrew his argument that the claim was time-barred.

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22. It is therefore my judgment that it was not reasonably practicable for the claim to have been presented within the statutory timescale, in all of the circumstances in this case. For reasons which are unknown to this Tribunal, there was some confusion in the drafting of the original ECC, which led to its rejection by the Tribunal. Mr Hart very fairly (and in my view, quite properly) accepted that this was a typographical error, outwith the claimant's control, and that confusion then followed. Had that confusion not taken place, the claim would have been presented in time.

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23. The claim was then presented within such further time as I consider to have been reasonable in all of the circumstances. It is plain that the claimant himself was aware of some of these events, but did not understand their implications, and was content to leave matters in the hands of his solicitors.

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24. I consider it entirely in the interests of justice to exercise the Tribunal's discretion to allow this claim to proceed. A typographical error on the ECC led to the rejection of the claim. This was outwith the claimant's control or understanding. Even reviewing these matters in retrospect, it is difficult to understand quite how the situation has arisen. It would be a gross injustice to visit upon the claimant the consequences of errors made by others, in

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this case, and accordingly I am satisfied that the Tribunal has jurisdiction to hear this case, and that it should be allowed to proceed.

5 25. I wish to record my thanks to both Ms Mohamed and Mr Hart for their helpful and entirely reasonable approach to a rather difficult hearing, and for their co-operation in working out exactly how the proceedings had reached this stage. The respondent's acceptance that their argument on time bar should not be insisted upon reflected well upon them, but both parties are to be commended for their conduct of this hearing before me.

10 26. Date listing letters will now be issued in order to identify suitable dates upon which to list a hearing on the merits in this case.

15 **Date of Judgment: 17 October 2019**
Employment Judge: Murdo Macleod
Entered Into the Register: 21 October 2019
And Copied to Parties