

Case Nos: 1600099/2019
1600100/2019
1600206/2019
1600213/2019
1600259/2019
1600320/2019
1600397/2019



EMPLOYMENT TRIBUNALS

Claimants:

- (1) Mr M Jamroz
- (2) Miss I Toporek
- (3) Mr M Koziol
- (4) Mr C Grudnik
- (5) Mr B Koziol
- (6) Mr A Koziol
- (7) Mr W Kubak

Respondents:

- (1) TLSC London Limited (in compulsory liquidation)
- (2) Mr S Clemett
- (3) Secretary of State for Business, Energy & Industrial Strategy (Fifth Claimant only)

Heard at: Swansea **On:** 5 March 2020

Before: Employment Judge S Jenkins

Representation

Claimants: In person
Respondents: No attendance or representation

JUDGMENT

1. The Claimants' claims against the First Respondent are stayed until 4 September 2020 unless and until permission of the court is obtained for them to proceed. If permission is not obtained, they shall stand dismissed on that date.
2. The claims against the Second Respondent are dismissed.
3. The claim of the Fifth Claimant (Mr B Koziol) against the Third Respondent for a redundancy payment succeeds, and the Third Respondent is ordered to pay the Fifth Claimant a redundancy payment in the sum of £1050.00.
4. The Third Respondent is added as a Respondent to the claims of all Claimants pursuant to rule 34 of the Employment Tribunals Rules of

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Procedure, and the Third Respondent is directed to submit responses to those claims within 28 days of the date on which copies of those claims are served upon him.

REASONS

Background

1. The hearing was to deal with the claims brought by the seven Claimants arising from the termination of their employment with the First Respondent on 31 December 2018. All Claimants had brought claims in respect of notice, arrears of pay and holiday pay. Five of them had also brought claims of unfair dismissal, albeit two such claims had been rejected due to the lack of the required continuous service. Five of them had also brought claims of discrimination on the ground of race. A schedule of the Claimants, the specific claims they have brought, their dates of service, the dates of ACAS early conciliation, and the dates of submission of the claim form are set out in the Appendix to this Judgment.
2. All the Claimants commenced early conciliation with ACAS on the specified dates, naming only TLSC London Ltd, i.e. the First Respondent, which was not then in liquidation, as the prospective Respondent. All claims were however brought against TLSC London Ltd/Mr Steve Clemett. Following an earlier case management decision, those claims were accepted against both the First and Second Respondents. No response has ever been received from either the First or the Second Respondent. The First Respondent went into compulsory liquidation on 15 May 2019.
3. Correspondence was received from the Secretary of State, now the Third Respondent, albeit in respect of the Fifth Claimant only, dated 17 January 2020, noting that a hearing had been listed for 5 March 2020, that the notice of hearing did not state whether the Secretary of State was a Respondent, and asking that, if not a Respondent, for ET2 notices of claim to be sent, and to be specifically joined to the proceedings for the Fifth Claimant, Mr B Koziol. The letter confirmed that the Fifth Claimant had made an application for payment from the National Insurance Fund following the liquidation of the First Respondent, which had been rejected. A direction was made that the Secretary of State should be added as a respondent to the claim of the Fifth Respondent, Mr B Koziol.
4. The Third Respondent subsequently submitted a response to the Fifth Claimant's claims on 21 February 2020. That response dealt only with the Fifth Claimant's claim for a redundancy payment, noting that it had been

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rejected on the basis that the Claimant had not taken steps, pursuant to section 164 of the Employment Rights Act 1996 ("ERA") to pursue his claim for a redundancy payment within the specified time limit. The response noted that the Secretary of State did not propose to be represented in person at the hearing, and respectfully requested that the representations in the response be taken as the Third Respondent's written representation in relation to the particular claim.

5. I discussed various matters arising in respect of the claims with the Claimants, via their interpreter, Ms M Dubicka.

Decisions

The First Respondent, TLSC London Ltd (in compulsory liquidation)

6. The tribunal had written to each Claimant on 13 August 2019, noting that the First Respondent was in compulsory liquidation and that the Insolvency Act 1986 ("IA") provides that legal proceedings cannot be instituted or continued against a company in compulsory liquidation without the permission of the court. The letter noted therefore, that the proceedings were stayed against the First Respondent, and that the Claimants should decide whether to apply to the court for such permission. Alternatively, if the Claimants decided to abandon the claims against the First Respondent, they were asked to write to the Tribunal withdrawing those claims.
7. Understandably, the Claimants had not fully understood the content of the tribunal's letter of 13 August 2019 and no steps had been taken to seek permission or to withdraw the claims. At the hearing, I explained the effect of section 130(2) of the IA, and confirmed that I could take no step, other than to confirm the stay of the proceedings against the first Respondent. I therefore ordered that those claims be stayed for a period of six months, and that if permission of the court is not obtained during that period, the claims against the First Respondent will stand dismissed.

The Second Respondent, Mr Steven Clemett

8. As noted above, during case management of these claims, a direction had been made that the reference within the claim forms to the Respondent as "TLSC London Limited/Mr Steven Clemett" should have been treated as instituting claims against both Respondents and therefore that the claims should be served on both Respondents. However, as I have noted above, the Claimants had not pursued any form of early conciliation with the Second Respondent, with the various certificates naming "TLSC London Limited" only.
9. The issue of compliance with the early conciliation requirements had not been addressed when the claims were served on the Second Respondent,

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and I therefore concluded that the claims against the Second Respondent, which could only be the race discrimination claims brought by five of the Claimants as the other claims can only lie against the First Respondent as their employer, should be dismissed. That was on the basis that the claim forms did not contain an early conciliation number in respect of the Second Respondent, or confirmation that one of the early conciliation exemptions applied, applying Rule 12(1) of the Employment Tribunals Rules of Procedure (“Rules”).

10. In any event, no particulars of the race discrimination claims, presumably to be based on their Polish nationality, were included in any of the claim forms. The Claimants also indicated to me that all of the First Respondent's employees, i.e. including British ones, had been dismissed at the same time. Even therefore, if the Claimants had complied with the early conciliation requirements against the Second Respondent, I would have considered it appropriate to strike out the claims of race discrimination on the basis that they had no reasonable prospect of success, applying Rule 37.

The Third Respondent, Secretary of State for Business, Energy and Industrial Strategy

11. As noted above, the Third Respondent had only been joined in respect of one of the Claimants, the Fifth Claimant, Mr B Koziol. Also, the response to the Fifth Claimant's claim dealt only with his redundancy payment claim. In respect of that, the response indicated that the Fifth Claimant's claim for a redundancy payment had been rejected due to the Claimant's failure to comply with the provisions of section 164 ERA within the relevant time limit.
12. The particular provisions of section 164 ERA indicate that an employee does not have a right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date (in this case, 31 December 2018), one of various specified steps has been taken. Those steps include: referring a question as to the employee's right to, or the amount of, a redundancy payment to an employment tribunal; and presenting a complaint relating to the employee's dismissal to an employment tribunal under section 111 ERA.
13. In his case, the Fifth Claimant had brought a claim before the employment tribunal on 28 February 2019 for, amongst other things, a redundancy payment and unfair dismissal. That was done within the period of six months beginning with the relevant date of 31 December 2018, and therefore he had complied with the terms of section 164 ERA.
14. Section 166 ERA deals with applications for payments of redundancy payments to the Secretary of State. It provides that where an employee claims that his employer is liable to pay to him an employer's payment (i.e. a redundancy payment), and the employee has taken all reasonable steps,

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other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or the employer is insolvent and the payment remains unpaid, the employee may apply to the Secretary of State for payment. The Third Respondent's response notes that, on 9 October 2019, the Claimant's claim was received by the Secretary of State for a payment under section 166 ERA.

15. The Third Respondent appears to have based its contention that the Fifth Claimant had not complied with the steps set out in section 164 ERA within the appropriate time limits by reference to the fact that his claim was received by the Secretary of State only on 9 October 2019. However, section 166 ERA does not specify any time limit within which the application to the Secretary of State must be made. As already noted, section 164 ERA requires the question of the employee's right to a redundancy payment to be referred to employment tribunal within six months of the relevant date, and the Fifth Claimant did indeed make such a claim within the required period.
16. Ultimately, as the Fifth Claimant's employment ended in circumstances which entitle him to a redundancy payment, and as he had two complete years of service, I concluded that the Third Respondent was obliged to make a payment to the Fifth Claimant pursuant to section 166 ERA and that the Third Respondent should be ordered to pay the Claimant the sum of £1050.00 in respect of that.
17. All of the Claimants then indicated to me that they had also made contact with the Third Respondent about their claims. In the circumstances, I considered it appropriate, exercising my power under Rule 34, that the Secretary of State should be added as a Respondent to the claims of all the Claimants and that he should be given 28 days from the date upon which copies of the claims and notices of claim form ET2 are served on him to submit responses to them.
18. I also, as noted above, noted that the Third Respondent's response in respect of the Fifth Claimant dealt only with his claim for a redundancy payment, whereas he also pursued claims for unfair dismissal, unpaid wages and holiday pay. I therefore directed that the Third Respondent should be given a further 28 days to submit an amended response in respect of the Fifth Claimant dealing with those other claims.
19. Upon receipt of the Third Respondent's response and amended response to the various claims, if payment of the various sums claimed pursuant to sections 166 and 184 ERA is contested, a further hearing will be arranged and further case management directions issued.

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Employment Judge S Jenkins

Date: 19 March 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....22 March 2020.....

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FOR THE TRIBUNAL OFFICE

APPENDIX

1. Mr M Jamroz - 1600099/2019

Claims remaining: holiday pay, arrears of pay and notice

Dates of service: 5 June 2017 to 31 December 2018

Early conciliation dates: 17 January 2019 to 21 January 2019

Date of claim form: 22 January 2019

2. Miss I Toporek - 1600100/2019

Claims remaining: holiday pay, arrears of pay and notice

Dates of service: 12 June 2017 to 31 December 2018

Early conciliation dates: 17 January 2019 to 21 January 2019

Date of claim form: 22 January 2019

3. Mr M Koziol - 1600206/2019

Claims remaining: redundancy payment, holiday pay, arrears of pay and notice

Dates of service: 29 July 2016 to 31 December 2018

Early conciliation dates: 11 February 2019 to 11 February 2019

Date of claim form: 16 February 2019

4. Mr C Grudnik - 1600213/2019

Claims remaining: redundancy payment, holiday pay, arrears of pay and notice

Dates of service: 20 March 2016 to 31 December 2018

Early conciliation dates: 11 February 2019 to 18 February 2019

Date of claim form: 18 February 2019

5. Mr B Koziol - 1600259/2019

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Claims remaining: redundancy payment, holiday pay, arrears of pay and notice
Dates of service: 16 October 2016 to 31 December 2018
Early conciliation dates: 17 February 2019 to 19 February 2019
Date of claim form: 28 February 2019

6. Mr A Koziol - 1600320/2019

Claims remaining: holiday pay, arrears of pay and notice
Dates of service: 9 June 2018 to 31 December 2018
Early conciliation dates: 11 February 2019 to 11 February 2019
Date of claim form: 18 February 2019

7. Mr W Kubiak - 1600397/2019

Claims remaining: redundancy payment, holiday pay, arrears of pay and notice
Dates of service: 15 August 2016 to 31 December 2018
Early conciliation dates: 11 February 2019 to 13 February 2019
Date of claim form: 29 March 2019