



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
LONDON CENTRAL

BETWEEN

Claimant Mr David Attridge
Respondents London Borough of Hammersmith and Fulham
Employment Judge: Mr J S Burns

Judgment

1. The judgment dated 20/8/2020 is revoked.
2. The claims have been brought within the applicable statutory time limits and accordingly the tribunal has jurisdiction to consider them.

Reasons

1. On 1/9/2020 I received an undated application from the Claimant for reconsideration of my judgment dated 20/8/2020, (in which I had found that all his claims were brought out of time and were accordingly outside the jurisdiction of the tribunal).
2. On 3/9/2020 I emailed the parties under rule 72(1) requesting by 4pm on 10/9/2020 (i) the Respondent to send me a written response to the application and (ii) both parties to send me confirmation whether each would prefer the application to be determined on the papers or following a hearing by CVP.
3. On 10/9/2020 at 15.46 I received the Respondent's response (mis)dated 19/9/2020 and signed by the Respondent's Counsel, together with a further copy of the Respondent's original skeleton argument dated 19/8/2020 and some case law, all of which I have considered. Both parties confirmed that they were content for me to determine the application for reconsideration on the papers and without a further hearing, and I have done so.
4. My reason on 20/8/2020 for finding that it had been reasonably practicable for the Claimant to bring his claims in time was as follows: *"The fact that he presented a claim in time (albeit against the wrong party) demonstrates that he could easily have presented a claim against the correct party in time. While I accept that the Claimant was suffering various stressors at the time, (including his dismissal, health problems, a pending divorce, threatened homelessness, financial difficulties and problems with rogue tenants occupying a property), I do not find that these were such as to make it not reasonably practicable for him to enter correctly the name of his employer in the requisite box on his ET1. The Claimant is an intelligent person who was quite capable of completing this simple task correctly, but instead he simply made a careless mistake"*.

5. This reasoning was based on the case Sterling v United Learning Trust UKEAT/0439/14/DM, which the Respondent submitted, as it continues to submit, is on all fours with Mr Attridge's situation. The most relevant passage is the first sentence of paragraph 24 of the judgment where Langstaff JP wrote "*An argument that it was not reasonably practicable would actually have been quite difficult in this case because the Claimant had actually submitted a form in time save only for the fact that she had misplaced or misrecorded the numbers on it, so the tribunal thought*".
6. The Claimant has taken issue with this in his application for reconsideration as follows: "*It should be noted that the argument used by the counsel that "I clearly could submit the paperwork on time because I did" is equally valid in reverse ie the fact that I did not complete the simple task correctly shows I was not capable at the time of doing so.*" *The fact that after accepting that I had undergone severe stress and anxiety as backed up by medical professionals, as mentioned by the counsel for Hammersmith and Fulham and as stated by the judge in his determination suggest that the court did not have contemporary knowledge of the impact of poor mental health on individual.*"
7. On reconsideration, and in the light the whole of the Claimant's application, I find that Sterling is not on all fours with Mr Attridge's situation. There is no suggestion in Sterling that the claimant in that case (who had made an error in composing the ET1) was suffering at the time from personal and health problems such as I accept were afflicting Mr Attridge, when he completed and lodged his ET1. There is no mention in Sterling of that claimant having had any personal problems as contributory factors.
8. I have come to the conclusion that Mr Attridge is correct. The fact that he presented a claim in time (albeit against the wrong party) does not demonstrate that he could easily have presented a claim against the correct party in time, because he in fact he did not include the correct party. The fact that he presented a flawed claim in time does not show that it was reasonably practicable for him to present a flawless claim in time. All that the presentation of the flawed claim shows is that it was reasonably practicable for him to make a mistake. The questions why he made the mistake and the significance of that have still to be answered.
9. I found and accepted that the Claimant was suffering various stressors at the time, (including his dismissal, health problems including mental ill-health, a pending divorce, threatened homelessness, financial difficulties and problems with rogue tenants occupying a property). I should have added to this the fact that on 5/6/19 (ie the day before the Claimant presented the flawed claim, - with the primary time limit about to expire on 7/6/2019) his solicitor, who had previously been helping the Claimant, emailed confirming that she had been ill and would not be back in her office until 10/6/2019. Hence she was not available to provide any support or assistance to the Claimant at the crucial time when he needed her to help him submit his claim.

10. I accept on a balance of probabilities that these factors caused him to make the mistake in completing the box in which he should have recorded the Respondent's name, and accordingly made it not reasonably practicable for the Claimant to present a correct claim during the primary period. I also find that as soon as the problem was drawn to his attention, he acted as swiftly as possible to redress the situation on 23 September 2019 so he succeeded in presenting his claim within a reasonable time after the primary period.

11. Insofar as his disability discrimination claim is concerned, this is ancillary and has no necessary connection to his main claim (which is that he was dismissed for whistleblowing). I do have some doubts about the merits of the disability claim, but I am not in any position to reach a clear view about it. My previous conclusion was that, as the other main claims could not proceed, it would not be just and equitable to extend time to allow the relatively limited disability claim to proceed alone. However, as I have now found that the other claims are within jurisdiction, the disability claim will not proceed alone to trial and that consideration does not arise.

12. Furthermore, the same personal considerations which made it not reasonably practicable for the Claimant to claim in time, also make it just and equitable for time to be extended as necessary for his disability claims to proceed.

13. Rule 70 in Schedule 1 of The ETs (Constitution and Rules of Procedure) Regulations 2013 provides that I may reconsider any previous judgment of mine where it is necessary in the interests of justice to do so. In its opposition to the reconsideration application the Respondent submits that the power to reconsider is restricted. I accept that this is so, that it is desirable that there should be finality and certainty in litigation and that it is unfortunate when a judge has to admit he has made a mistake so he has to revoke a previous decision. Nevertheless, as I have concluded that I made a mistake, in my judgment it is in the interests of justice that I use this power to rectify the situation.

14. I apologise to the parties for the delay and inconvenience which I have caused.

Mr J S Burns Employment Judge
London Central
14/9/2020
For Secretary of the Tribunals

date sent to the Parties – 16/09/2020