



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104834/2020**

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**Held via telephone conference call on 7 January 2021**

**Employment Judge P O'Donnell**

10 **Mr S Nixon**

**Claimant  
In Person**

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**JR Scaffolding Ltd**

**Respondent  
No appearance and  
No representation**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is:-

- 1) The Tribunal exercises its power under Rule 5 of the Rules of Procedure to  
25 extend the time for the Claimant to make an application under Rule 13 to 9  
October 2020.
- 2) The Tribunal allows the Claimant's application under Rule 13. The ET1 is  
accepted as being lodged on 9 October 2020.

### **REASONS**

30 **Introduction**

1. The Claimant's original ET1 was submitted to the Tribunal on 15 September  
2020. It was rejected because the name of the Respondent on the ET1 did  
not match the name of the Respondent on the ACAS Early Conciliation  
Certificate. This decision was communicated to the Claimant by  
35 correspondence dated 21 September 2020.

2. A revised ET1 with the name of the Respondent corrected to match the name on the ACAS Certificate was received by the Tribunal on 9 October 2020. This was treated as an application under Rule 13 for reconsideration of the decision to reject the ET1. The application was received 4 days after the expiry of the 14 day time limit set out in Rule 13.
3. This hearing was listed to consider whether the Tribunal would exercise its power under Rule 5 to extend the time limit for making the application under Rule 13 and, if so, whether to grant that application.

### **Claimant's submissions**

4. The Claimant made the following submissions.
5. He had been advised to "shield" by his doctor in March 2020 at the outset of the pandemic. He informed his employer of this and proceeded to shield for 14 days. After this time, he made regular contact regarding a return to work and was told not to return.
6. On 15 June 2020, he was informed by John Jack, a director of the Respondent, that the Claimant had been dismissed in March 2020. This is something which the Claimant disputes. He received a final payslip dated 6 July 2020 with all figures on it shown as zero.
7. The Claimant then commenced ACAS Early Conciliation in relation to monies he believes he is owed by the Respondent. The ACAS Certificate was issued on 14 September 2020 and the Claimant lodged his original ET1 on 15 September 2020.
8. The Claimant cannot recall the date on which he received the Tribunal's correspondence of 21 September 2020. He corrected the name of the Respondent and returned the revised ET1 by first class mail on the day on which he received the letter from the Tribunal.

### **Relevant Law**

9. Rule 5 of the Tribunal's Rules of Procedure states:-

*The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.*

10. Rule 13 states:-

5 (1) *A claimant whose claim has been rejected (in whole or in part) under rule 10 or 12 may apply for a reconsideration on the basis that either—*

(a) *the decision to reject was wrong; or*

(b) *the notified defect can be rectified.*

10 (2) *The application shall be in writing and presented to the Tribunal within 14 days of the date that the notice of rejection was sent. It shall explain why the decision is said to have been wrong or rectify the defect and if the claimant wishes to request a hearing this shall be requested in the application.*

15 (3) *If the claimant does not request a hearing, or an Employment Judge decides, on considering the application, that the claim shall be accepted in full, the Judge shall determine the application without a hearing. Otherwise the application shall be considered at a hearing attended only by the claimant.*

20 (4) *If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.*

### **Decision**

25 11. The first question for the Tribunal is whether to exercise its power under Rule 5 to extend the power under Rule 5 to extend the time for the application to be made. The application was received out with the 14 days specified in Rule 13 and, if the Tribunal does not exercise its discretion under Rule 5, it would be rejected as out of time.

12. The Tribunal noted that the Claimant had acted quickly throughout the process; he lodged the original ET1 as soon as the Early Conciliation process ended and he submitted the corrected ET1 as soon as he received notification of the rejection. This is not a case where the Claimant has delayed taking  
5 action or is at fault for any delays.
13. The Tribunal also took account of the fact that, taking the Claimant's case at its highest, the time limit for lodging his ET1 had not expired by the date he made the application under Rule 13. On his case, the Claimant's employment was not terminated until 15 June 2020. The normal three month  
10 time limit expired on 14 September 2020 and the Claimant engaged Early Conciliation before this. The extended time limit under the Early Conciliation Regulations expired on 14 October 2020.
14. In these circumstances, if the Claimant had simply lodged a fresh ET1 rather than seeking to correct the defect then that ET1 would have been lodged in  
15 time.
15. The Tribunal wishes to be clear that it has taken the Claimant's case at its highest. It makes no finding as to when the Claimant was, in fact, dismissed.
16. Taking account of these factors, the Tribunal has considered the balance of prejudice to the parties and the interests of justice. There is a significant  
20 prejudice to the Claimant if the time limit is not extended as he would then be denied the opportunity to pursue a claim which, taking his case at the highest, would otherwise would have been lodged in time. It cannot be in the interests of justice to deny the Claimant access to justice in such circumstances where there was only a short delay which was not caused by him.
- 25 17. On the other hand, there is little or no prejudice to the Respondent who will not be in any way prevented or disadvantaged in defending the claim.
18. In these circumstances, the Tribunal exercise its power under Rule 5 to extend the time limit for the Claimant to make an application under Rule 13 to 9 October 2020. The application was made within that extended time limit.

19. Turning to Rule 13, the Tribunal finds that the Claimant has rectified the defect in the original ET1 by correcting the name of the Respondent on the ET1 to match the name on the ACAS Certificate.
20. The Tribunal, therefore, allows the application to reconsider the rejection of the ET1 and it is now accepted. In terms of Rule 13(4), the ET1 is accepted as at the date on which the defect was rectified, that is, 9 October 2020.

10 Employment Judge: Peter O'Donnell  
Date of Judgment: 7<sup>th</sup> January 2021  
Entered in Register: 11<sup>th</sup> January 2021  
Copied to Parties