



EMPLOYMENT TRIBUNALS
London Central Region

Heard CVP on: 17 March 2021

Claimant: Mr Jack Bowman

Respondent: Digital Home Visits Ltd

Before: Tribunal Judge J S Burns

Representation

Claimant: Mr D Gray-Jones (Counsel)

Respondent: Ms B Lester (Solicitor)

JUDGMENT

The claims are struck out.

REASONS

1. This Preliminary Hearing has been listed to determine the following issue: "*Whether the second ET1 was presented out of time. If, as appears to be the case, the second ET1 was submitted out of time the issue for the Tribunal to decide is whether it was reasonably practicable for the claim to be presented in time. If the Tribunal is satisfied that it was not reasonably practicable to present the claim in time, it will consider whether it was presented in such further period as the Tribunal considers reasonable, see article 7 of the Order.*"
2. The Claimant pursues a claim of breach of contract against the Respondent under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. His principal complaint is for wrongful dismissal, namely damages in respect of his 3-month contractual notice period. Expenses amounting to approximately £1500 are also claimed as well as unpaid pension contributions.
3. The hearing was conducted by CVP as a consequence of the Covid19 pandemic. There were no technical problems.
4. I have read a witness statement from the Claimant, and also heard brief evidence on oath from him. He stated in response to a supplementary question in chief that he had suffered some personal issues after his employment terminated. He confirmed in cross-examination that he had been aware of the time-limits applicable to submitting his claim, and also that he was aware of the correct identity of the Respondent when he applied for EC before presenting his first claim.
5. I received skeleton arguments from each side, and I received oral submissions.
6. Prior to today the Claimant has acted as a litigant in person.
7. The Claimant was employed by the Respondent as Chief Executive Officer between 21 September 2019 until 23 March 2020.
8. The claim was registered for ACAS conciliation on 20 June 2020, and the EC Certificate correctly named the Respondent as Digital Home Visits Ltd.

9. The EC Certificate was issued on 14 July 2020 and the limitation period expired on 14 August 2020.
10. On 13 August 2020 the Claimant issued his ET1 incorrectly naming Anthony Lionakis, a director, as respondent. This was rejected on 29 September 2020, as a result of lack of correlation between the EC certificate and the ET1. This was before the change to Rule 12(2A) came into force on 8 October 2020 - which change widened the Tribunal's discretion to condone errors.
11. The judge who rejected the ET1 did not consider that the Claimant had made a minor error or that it would not be in the interests of justice to reject the claim (Rule 12(2A), ET Rules).
12. When notifying the Claimant of the rejection of his original claim under Rule 12(2A), the ET advised the Claimant of his options in this regard: if he thought the Tribunal's decision was wrong, he could ask the Tribunal to reconsider but if he agreed with the Tribunal's decision, he could correct the mistake identified in the Tribunal's rejection letter and then ask the Tribunal to reconsider its decision (which is what he did). The error was notified to the Claimant on 1 October 2020 and he immediately submitted a corrected ET1 that same day, correctly identifying the Respondent. The corrected ET1 is hereafter referred to as '*the second ET1*'.
13. The second ET1 was accepted on 28 October 2020 but the Claimant was notified that he may nevertheless be barred from proceeding with his claim as the ET1 had been submitted out of time.
14. I have been referred to case law including Software Box v Gannon UKEAT/0433/14/BA where the reason the original ET1 was rejected was for non-payment of the fee. The judge on appeal held that it was not reasonably practicable for the claim to have been brought in time (notwithstanding the fact that the original ET1 was submitted in time) and that the claimant had submitted her second ET1 late but as soon as reasonably practicable after the original time limit expired. This case was further considered in Adams v BT PLC 2017 ICR 382
15. In Adams an ET1 had been rejected when presented with an incorrect EC number (the last two digits were missing). The amended ET1 was then presented late. The EAT (Simler J) held that "*The question for the Tribunal, in those circumstances, was not whether the mistake she originally made on 16 February was a reasonable one but whether her mistaken belief that she had correctly presented the first claim on time and did not therefore need to put in a second claim was reasonable having regard to all the facts and all the circumstances.*"
16. The important question is whether in this case, objectively, the Claimant Mr Bowman until 1/10/20 had a reasonable belief that he had presented a valid claim against the Respondent.
17. It was submitted in his favour that "*the fact that the Respondent named in the ET1 differed from the Respondent on the EC Certificate was an error but, in the circumstances, which include the fact that the Claimant was acting as a litigant in person and the importance of Rule 12(1)(f) is not a provision that would be obvious to a litigant in person*"
18. In Software Box the problem was non-payment of a fee. In Adams, the problem was the omission of two digits from an EC number, but in each case the correct Respondent had been named on the original ET1.
19. In the instant case, however, the error was more fundamental. A wholly different and incorrect proposed respondent had been cited, and the correct Respondent not cited. This was, in fact, the finding of the judge when he rejected the claim.
20. The Claimant Mr Bowman obviously knew very well that he had been employed by the Respondent and not by Anthony Lionakis. He must have known this because he had held until March 2020 a senior position within the Respondent, and also, as preliminary to litigation, he applied for EC not against Lionakis, but against the Respondent.
21. Having done that, he then unreasonably failed to sue the Respondent, but instead put the Anthony Lionakis's name on the ET1. Objectively, he had no basis subsequently for holding a genuine and reasonable belief that a valid claim had been issued against the Respondent in

time, such as to create an impediment making it not reasonably practicable for him to present the second ET1 in time.

22. I was referred to various other authorities pointing out that the rules of procedure should be operated in a flexible and pragmatic way etc. I have noted these but the intentionally short Tribunal time limits exist for good reason and should be given effect.
23. In this case the Claimant, having obtained his EC certificate a month before, nevertheless waited to the last day before the primary limitation period expired, then failed to claim against the correct party and finally presented his ET1 against the Respondent some 6 weeks after that expiry.
24. I find that it was reasonably practicable for the Claimant to present his claim against the Respondent within the primary limitation period, but he failed to do so. It follows that the claims have been presented out of time and must be struck out.

J S Burns Employment Judge
London Central
17/3/2021

For Secretary of the Tribunals
Date sent to parties- 17th March 2021
