

Case Numbers: 1300433/2021  
1300493/2021  
1300610/2021  
1300611/2021  
1300855/2020  
1309111/2020



# EMPLOYMENT TRIBUNALS

**Claimants:** (1) Claire Ruff; (2) Rachael Hill; (3) Jessica Mason; (4) Mary Morrison-Davis; (5) Andrew Kerr; and (6) Garry McManus

**Respondent:** STA Travel Ltd (in Creditors Voluntary Liquidation)

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Birmingham (by CVP)    **On:** 26 October 2021

**Before:** Employment Judge Choudry (sitting alone)

### Appearances

For the claimants: In person

For the respondent: No appearance

## JUDGMENT FOLLOWING PRELIMINARY HEARING

The Tribunal does not have jurisdiction to hear the claims presented by the claimants set out below for a protected award as their claims have been presented outside the time limits prescribed by statute and it was reasonably practicable for the claimants to present their claims in time:

Claire Ruff (case number: 1300433/2021)

Rachael Hill (case number: 1300493/2021)

Jessica Mason (case number: 1300610/2021)

Mary Morrison-Davis (case number: 1300611/2021)

# REASONS

## Background

- (1) The form of remote hearing was via cloud video platform. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
- (2) The claims were listed for a preliminary hearing before me to determine whether the first four claimants had presented their claims out of time. Depending on the outcome of the preliminary hearing, case management orders could be issued at the conclusion of the preliminary hearing in respect of their claims and also in respect of the claims by Messrs Kerr and McManus who had presented their claims in time.

## Evidence

- (3) I considered the claim forms for each of the claimants, their early conciliation certificates and also the representations which the first four claimants had made in response to the letter from Regional Employment Judge Findlay dated 10 September 2021 in which each of the claimants (except Messrs McManus and Kerr) were ordered to provide a statement setting out why they did not claim within 3 months of the dismissals and attaching any relevant documents to their statement. I also heard evidence from the four claimants whose claims had been presented out of time.

## The issues

- (4) Were the claimants' complaints presented within the three month time limit set out in section 189(5) of the Trade Union & Labour Relations (Consolidation) Act 1992 ("TUL(C)RA")? The parties do not dispute that the effective date of termination was 2 September 2020.
- (5) If not, was it presented within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

## The facts

### Claire Ruff

- (6) The claimant commenced employment with the respondent on 1 September 1994. She was latterly employed as a Branch Manager at the University of Warwick. She was made redundant on 2 September 2020 following the respondent entering Creditors Voluntary Liquidation.

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- (7) The claimant's dates of early conciliation were 3 February 2021 to 4 February 2021 and she issued her claim on 4 February 2021. In evidence the claimant indicated that she did not make a claim as when she was first made redundant as she was not aware that she could bring a claim for a protective award. It was only when two colleagues based in Leicester brought a successful claim that she became aware of a potential claim. The liquidators had told her to claim for redundancy pay and holiday pay only.

**Rachael Hill**

- (8) The claimant commenced employment with the respondent on 10 April 2017. She was latterly employed as Assistant Manager at the Birmingham High Street Store. She was made redundant on 2 September 2020 following the respondent entering Creditors Voluntary Liquidation.
- (9) The claimant's dates of early conciliation were 8 February 2021 to 9 February 2021 and she issued her claim on 9 February 2021. In evidence the claimant indicated that she had thought that the protective award was only available to those employees who earned more than £538 and as she earned less than this she thought that she was not eligible. It was only when other colleagues advised her in February 2021 that her understanding was incorrect that she commenced ACAS Early Conciliation.

**Jessica Mason**

- (10) The claimant commenced employment with the respondent on 24 August 2016. She was latterly employed as a Travel Expert at the respondent's site at Corporation Street, Birmingham. She was made redundant on 2 September 2020 following the respondent entering Creditors Voluntary Liquidation.
- (11) The claimant's dates of early conciliation were 4 September 2020 to 4 September 2020 and she issued her claim on 21 February 2021. In evidence the claimant indicated that she commenced Early Conciliation straight away but she thought after speaking to ACAS that she was not entitled to anything and it was only after speaking to former colleagues that she realised that this was not the case. When questioned the claimant confirmed that she had read about protective awards online but found the information confusing and it was only after she had spoken to colleagues that she realised she had a potential claim.

**Mary Morrison-Davis**

- (12) The claimant commenced employment with the respondent on 5 November 2010. She was latterly employed at the University of Birmingham store. She was made redundant on 2 September 2020 following the respondent entering Creditors Voluntary Liquidation.

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- (13) The claimant's dates of early conciliation were 4 February 2021 with her Early Conciliation certificate being issued on the same day. Her claim was issued on 20 February 2021. In evidence the claimant indicated that she was not aware that she could bring a claim for a protected award until 11 January 2021 when she became aware through other colleagues. The claimant did not do her own research either on this point.

### **The law**

- (14) Section 189(5) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides:

*"An employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal-*

- (a) before the date on which the last of the dismissals to which the complaint relates takes effect, or*
- (b) during the period of three months beginning with that date;*
- (c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of three months, within such further period as it considers reasonable..*

- (15) Section 189(6) of TULRA provides:

*"Where the complaint concerns a failure to comply with a requirement of section 188 or 188A, section 292A extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of section (5)(b).*

- (16) The Court of Appeal in **Marks & Spencer plc v Williams-Ryan [2005] EWCA Civ 470** sets out a number of legal principles to consider in relation to time limits which although related to a claim for unfair dismissal is equally relevant here as the test is still one of reasonable practicability. The principle to consider were as follows:

- Section 111(2) of ERA 1996 should be given a liberal interpretation in favour of the employee;
- Regard should be had to what, if anything, the employee knew about the right to complain to a tribunal and of the time limit for doing so.
- Regard should also be had to what knowledge the employee should have had, had they acted reasonably in the circumstances. Knowledge of the right to make a claim does not, as a matter of law, mean that ignorance of the time limits will never be reasonable. It merely makes it more difficult for the employee to prove that their ignorance was reasonable.

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- Where a claimant retains a solicitor and fails to meet the time limit because of the solicitor's negligence, the claimant cannot argue that it was not reasonably practicable to submit the claim in time.

## **Conclusions**

- (17) In making my conclusions I have considered all the evidence before me and the oral submissions made on behalf of both parties.
- (18) The claimants' effective date of termination was 2 September 2020. As such, their claims should have been presented to the Tribunal by 1 December 2020. Even taking into account any extension for early conciliation the claims of Claire Ruff, Rachael Hill, Jessica Mason and Mary Morrison-Davis have been presented outside the time limits prescribed by statute.
- (19) The question for me to consider then is was it reasonably practicable for the claimants to present their claim in time. I am not satisfied on the evidence before me that the claimants made sufficient effort to make themselves aware of their rights as they should have done and indeed as other claimants did. Each of the claimant has only progressed their claims once becoming aware of the success of their colleagues in another Tribunal claim.
- (20) In relation to Mary Morrison-Davis even if it was not reasonably practicable for Mrs Morrison-Davis to bring her claim in time, I also take the view that Mrs Morrison-Davis that her claim was not presented within a reasonable timescale as she became aware of a potential claim in January 2021, commenced Early Conciliation on 4 February 2021 but did not issue her claim until over two weeks later without any reasonable explanation.
- (21) In the circumstances, I am satisfied that it was reasonably practicable for the claimant to present his claim in time.
- (22) As such, the tribunal does not have jurisdiction to hear the claims of Claire Ruff, Rachael Hill, Jessica Mason and Mary Morrison-Davis and the claims are dismissed.
- (23) The following case management orders were *uncontentious* and largely made by consent. Insofar as they are not made by consent, reasons, to the extent not set out below, were given at the time and written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of the sending of this written record of the decision.

## ORDERS

### Made pursuant to the Employment Tribunal Rules of Procedure

#### 1. Complaints and issues

- 1.1 The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

#### 2. Witness statements

- 2.1 The remaining claimants shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other and to the Tribunal on or before **23 November 2021**. The witness statements should set out clearly the evidence supporting their claims for a protective award and their assertion that they were part of an establishment at which 20 or more employees were made redundant. Any documents relevant to this issue should be attached to their witness statements. The written statements must: have numbered paragraphs; be cross-referenced to the documents; contain only evidence relevant to issues in the case. The claimants' witness statement must also include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

#### 3. Hearing

- 3.1 All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting alone at the Employment Tribunals, **13<sup>th</sup> Floor, Centre City Tower, 7 Hill Street, Birmingham, B5 4UU**, on **25 April 2022**, starting at 10 am or as soon as possible afterwards. The time estimate for the hearing is 3 hours.

#### 4. Other matters

- 4.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 4.2 Anyone affected by any of these orders may apply under rule 29 for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.

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**4.3 Public access to employment tribunal decisions**

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**4.4 Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**

**4.5 Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

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**Employment Judge Choudry**

26/10/2021