



EMPLOYMENT TRIBUNALS

Claimant: Mr Windsor

Respondent: Thomas Hardie Commercials Limited

Heard at: Manchester **On:** 10th November 2021

Before: Employment Judge Howden-Evans

Representation

Claimant: No attendance

Respondent: Ms Robertson, solicitor

JUDGMENT

The Claimant's claim for a statutory redundancy payment was not made within the time limits set out in s164 Employment Rights Act 1996; as such the tribunal does not have jurisdiction to hear this claim and the claim is dismissed.

Reasons

1. This final hearing was listed to determine this case. The Claimant has not attended today's hearing. Rule 47 Employment Tribunal Rules of Procedure 2013 explains that if a party has not attended (or been represented at) a hearing I may dismiss the claim or proceed in the absence of that party. I have considered the documents that are available to me. The clerk has tried to speak to the Claimant and has emailed the Claimant to encourage the Claimant to attend.
2. As 30 minutes after the start of the hearing, the Claimant had not joined the hearing, I decided to continue this hearing in the absence of the Claimant. Having considered the documents, I note the Claimant appears to be trying to seek a statutory redundancy payment. There appears to be a fundamental flaw to this claim:
 - a. It is agreed that Claimant's employment ended on 31st July 2020 at which point he received a redundancy payment for 2 years' service.

- b. 12 months later, on 5th August 2021, the Claimant made a written request to for his redundancy payment to be increased, to reflect continuous service of 22 years.
 - c. As an aside, there is an issue as to whether the Claimant has 22 years' continuous employment; the Respondent asserts the Claimant's continuous employment commenced on 11th June 2018, there having been a break in employment between 31st May 2018 and 11th June 2018.
 - d. Crucially, s164 Employment Rights Act 1996 provides that an employee does not have a right to a redundancy payment unless, they have made a written request to the employer, or made a complaint to the employment tribunal, within 6 months of their last day of employment.
 - e. The effect of s164 Employment Rights Act 1996 is that the last date on which Mr Windsor could have written to his former employer (or issued a tribunal claim) seeking an increase in his redundancy payment was 30th January 2021.
 - f. S164(2) and s164(3) Employment Rights Act 1996 gives the tribunal a discretion to still consider a claim for a redundancy payment when a Claimant has missed the 6 month time period - but this discretion only exists if the Claimant has made a written request to the employer (or issued a tribunal claim) seeking the redundancy payment within 12 months of the last day of employment. In the Claimant's case, the 12 months expired on 30th July 2021. The Claimant made a written request (to increase his redundancy payment) to his former employer on 5th August 2021, but this was 5 days too late. When a claim or written request to the employer is made even 1 day after the 12 month period, the claim is out of time and the tribunal has no discretion that it can use to extend this time limit. See the case of *Crawford v (1) Secretary of State for Employment (2) Colmore Depot 1995 IRLR 523, EAT*
3. If the Claimant wishes to apply for me to reconsider this decision, he should write to the Respondent and the Tribunal within 14 days of this Judgment being sent to him, explaining:
- a. Whether they did make a written request for the redundancy payment on or before 30th July 2021; and
 - b. Why it is in the interests of justice for me to reconsider this judgment?

Employment Judge Howden-Evans
Dated: 10th November 2021

Case No: 2410279 / 2021

JUDGMENT SENT TO THE PARTIES ON

15 November 2021

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