



EMPLOYMENT TRIBUNALS

Claimant: Mr J Lyons
Respondent: Jelthat Ltd T/A Newport Mazda
Heard at: Cardiff via CVP **On:** 10th January 2022
Before: Employment Judge G Duncan

Representation:
Claimant: In person
Respondent: Mr Hoyle (Litigation Consultant)

JUDGMENT

It is the decision of Employment Judge G Duncan that the claim for notice pay was presented out of time and is dismissed.

WRITTEN REASONS

Introduction

1. The Claimant is John Lyons. He worked as an Aftersales Director for the Respondent company, Jelthat Ltd T/A Newport Mazda. He worked from August 2018 until his employment ceased in December 2019.
2. The Claimant represents himself at the hearing today. He has represented himself throughout the proceedings.
3. The Defendant is represented by Mr Hoyle. The Defendant, until very recently, has been unrepresented during the proceedings.

Background

4. The Claimant, in his ET1, received on 31st July 2020, states that he worked for the Respondent until the 6th December 2019 when he resigned and requested that he be put on “garden leave”. He asserts that the Respondent accepted this offer in full. He therefore did not continue attending the garage at which he worked. The

Claimant states that he received no explanation as to why the notice pay was not paid. He calculates that he is owed £2366.66, he reaches this figure by calculating his average pay and taking away the amount he owed for an MX5 vehicle.

5. The Respondent completed an ET3 and contests the claim made in full. It is agreed that the Claimant requested to be put on garden leave and not to work his notice. However, it is stated that due to the importance of the Claimant within the company, and negative financial impact of his request, the Respondent did not agree to the months' notice pay without undertaking any further work. The Respondent asserts that the Claimant was notified of this position. The Respondent states that the Claimant left his keys and company property on the 6th December and did not return. The Respondent also outlines that the Claimant remains in debt to the Respondent for the cost of the vehicle.
6. In terms of the procedural background, through correspondence with the Tribunal it was clarified that no counterclaim was being pursued. Accordingly, the Tribunal gave directions on 22nd June 2021 for the filing of evidence and listed the matter for a Preliminary Hearing today. It was subsequently clarified that the hearing would be utilised as a Final Hearing of the claim, if the time limit issue was overcome in favour of the Claimant.
7. On the 5th January 2021, the Respondent's representative wrote to the Tribunal effectively pursuing an application for strike out. The basis of that application is set out in the correspondence. A response from EJ Harfield makes it clear that the case remains listed for trial and that both parties must urgently comply with the case management orders.
8. In consideration of the claim I have had regard to the 69 page bundle, short statement from the Claimant and additional correspondence that has been sent to the Tribunal.

Hearing

9. At the outset of the hearing, I outlined that it appeared necessary to consider the time limit issue as a preliminary point. I explained that I would hear submissions from both parties. Mr Lyon explained that he did not realise that he had to proceed with a claim within the three month period. He states that he thought he had 12 months to bring a claim. He states that he engaged in some correspondence with the Tribunal staff and that the claim seemed to be lodged without issue. I remind the parties that it is not for the Tribunal staff to engage in providing advice. He states that he would have made the claim sooner had he known that he needed to do so. The reason that the claim was issued in July was that the Claimant was made unemployed at that time and he says he had the time to do so. I enquired as to when he became aware that time limits may be an issue and he explained that it only came to his attention when there was correspondence with Mr Hoyle last week.
10. In response, the Respondent states that the termination date is 6th December 2019. That the certificate was obtained in March 2021 and that the Claimant is a number of months out of time. He states that the Claimant plainly had an

opportunity to make the claim. The Respondent states that the Claimant was plainly aware of some time limit issues as it is referred to in his ET1. Mr Hoyle submits that making a claim was feasible and that to make the claim would not have taken a significant period of time in terms of preparation.

11. I gave the Claimant a further chance to address the Tribunal on the issue and it was stated that he thought the claim had been accepted at the time of filing. He further stated that there was no correspondence with the Respondent. He accepts that he is in the wrong but submits that it was not practicable to make the claim earlier.

Law

12. There is a three month time limit for presenting a complaint to the Tribunal. If the Tribunal is satisfied that it was not reasonably practicable to present a complaint within three months, it may be presented within such further time as the tribunal considers reasonable. Essentially, the questions that must be asked are as follows:

- a) Was the claim made within three months?
- b) If not, was it reasonably practicable to present the claim within the three months?
- c) If it was not, was the complaint nevertheless presented in time?

13. I remind myself that where the claimant is generally aware of his or her rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on inquiry as to the time limit. Indeed, in *Trevelyan's (Birmingham) Ltd v Norton* 1991 ICR 488, EAT, Mr Justice Wood said that, when a claimant knows of his or her right to complain of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim.

14. While it is generally difficult for a claimant who knows of the existence of the right to claim to persuade an employment tribunal that he or she behaved reasonably in not making inquiries as to how, and within what period, to exercise the right, each case will depend on its own particular facts.

Decision

15. The facts of this particular case are straightforward given that it is agreed that the last date of work undertaken was the 6th December 2019. The Claimant states that he should have been paid to cover the month that followed. ACAS received notification on 28th February 2021 and the Claimant obtained an ACAS certificate on 28th March 2020, but then took no action for the following four months until issue.

16. The reason for that delay is simply the Claimant did not know of the time limits, he also asks the Tribunal to consider that that he was busy before this date. I am troubled by the contents of the ET1 when compared to the information that the Claimant provided me today that the first he knew of time limits being a potential issue was the correspondence of Mr Hoyle. In my judgment, it is plain from the contents of the ET1 that there was the potential for time limits to have been an issue at that time. Regardless, there is a duty upon a Claimant to undertake the most basic of steps to properly investigate the time limits for their claim. The Claimant knew of the fact that there was the potential for a claim, engaged in ACAS and took no further action. The Tribunal is aware of the wealth of information available from ACAS that accompany the certificate being sent out and explaining the Tribunal process. That material is readily accessible and indeed, if the certificate is provided by email, there are links within that email to documents explaining the rules around time limits. I have been provided with no evidence by the Claimant of difficulties that he may have had engaging with ACAS, of the information available to him at that time, nor of any difficulties that he may have had in issuing thereafter. I have not been provided with any evidence that impacted the Claimant's ability to bring a claim. The reason is as straightforward as he was unaware of the time limit.
17. I consider that the Claimant failed to undertake the most basis of steps in the circumstances and having identified a potential claim, should have been proactive in considering the relevant timescales. In my judgment, the Claimant's ignorance of the time limits is not reasonable. It was reasonably practicable to have made the claim within the three month period. In my view, no proper reason has been provided for the delay.
18. The Tribunal therefore lacks jurisdiction and the claim will be dismissed.

Employment Judge G Duncan

10th January 2022

JUDGMENT AND REASONS

SENT TO THE PARTIES ON 18 January 2022

FOR THE SECRETARY OF EMPLOYMENT

TRIBUNALS Mr N Roche