



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101556/2019

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Held In Glasgow on 11 July 2019

Employment Judge R Gall

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Mr D Jones

**Claimant
In Person**

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**John McArthur
Ams Chartered Accountants**

**Respondent
Not present and
Not represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the hearing on 11 July 2019 is postponed. The case is sisted for a period of 2 months to allow the claimant to consider how he wishes to proceed and in particular whether to seek to restore Clotie Dumpling Ltd to the Register, that entity having been struck off and having been employer of the claimant against whom this claim would appear to be properly directed.

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REASONS

1. This case called for hearing at Glasgow on 11 July 2019. The claimant appeared in person. There was no appearance for the respondent. He had not lodged form ET3 although he had written to the Tribunal explaining his position.

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2. The hearing had been set down on the basis that to preliminary matters required to be considered. Firstly, the claim appeared to be time-barred. It was a claim for redundancy payment. The claimant states that his employment ended on 23 June 2018. An initial attempt was made in February

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E.T. Z4 (WR)

2019 to present a claim. An issue related to the ACAS Early Conciliation Certificate led to rejection of that claim. That issue was resolved and the claim was accepted on 13 March 2019. It was therefore presented outwith the period of 6 months permitted for presentation of a claim for redundancy pay. There is however an extension of time possible if the Tribunal is persuaded that it is just and equitable to extend the time for presentation of such a claim.

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3. The second preliminary issue which required to be considered was that of identity of employer. The respondent, Mr McArthur, had stated that the employer was Clotie Dumpling Ltd. It appeared that the claimant agreed with this. That however required to be clarified with the claim potentially being served on Clotie Dumpling Ltd if it was amended so that that entity became the respondent.

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4. At the end of May 2019 the claimant had sent to the Tribunal a print from the Register of Companies which stated that Clotie Dumpling Ltd was dissolved on 21 May 2019.

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5. At the outset of the hearing, Mr Jones, the claimant, confirmed that his claim properly lay against Clotie Dumpling Ltd as that entity had been his employer. He had brought the claim against Mr McArthur in circumstances where the business had simply "shut up shop". There been no formal insolvency by way of appointment of a liquidator, receiver or administrator. The Insolvency Service had rejected his claim as there was no formal insolvency and as he did not have a Judgment from a Tribunal awarding him of redundancy payment. Mr McArthur had been a director of the limited company.

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6. In normal circumstances an amendment would have been appropriate so that the respondent became Clotie Dumpling Limited. The claim might then have been served on that entity. The difficulty with that process was however that Clotie Dumpling Ltd no longer existed, having been dissolved. My view was that I could not amend the claim to bring in as respondent an entity which no longer existed. I explained that to the claimant.

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7. Where a limited company has been dissolved it is possible for an application to be made to restore that company to the Register. That is a process undertaken, as I understand it, in the Sheriff Court. From what the claimant said, he wishes to explore that option. He also wishes to take the matter up once more with the Insolvency Service to establish their position now that the limited company is no longer in existence.
8. It seemed to me appropriate therefore to postpone this hearing. Given the steps which the claimant may take of exploring the matter with the Insolvency service and also exploring potential restoration of the limited company to the Register, it was in my view appropriate to sist the claim for a period of 2 months to enable the steps to be considered and potentially taken. The claimant confirmed that he wished so to proceed.
9. The hearing was therefore postponed and the claim is sisted for a period of 2 months. The Clerk to the Tribunals is requested to bring the file back before an Employment Judge in mid-September if nothing further has been heard from the claimant by that time as to any development and any steps desired in the claim.
10. If the limited company is restored to the Register then the claim would require to be amended so that it was brought against that company and then served upon them. At any subsequent hearing, the issue of time-bar and possible extension of time would remain something to be resolved before Judgment could potentially be issued.

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Employment Judge: R Gall
Date of Judgment: 12 July 2019
Entered in register: 16 July 2019
and copied to parties

