



EMPLOYMENT TRIBUNALS

Claimant: Christopher Saunders

Respondent: Jack Wills Retail Limited

Heard at: Bristol via VHS **On:** 3 March 2022

Before: Employment Judge King

Representation

Claimant: In person

Respondent: Stephen Wyeth – Counsel

JUDGMENT having been sent to the parties on 10 March 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. This is a Preliminary Hearing to decide the issue of whether the claim has been brought in time.

Issues

2. The issues before the tribunal are:
 - a. What was the Claimant's Effective Date of Termination ("EDT")?
 - b. Was the Claim form presented within three months of the EDT?
 - c. If not, was it reasonably practicable for the Claimant to have done so?
 - d. If not, was it presented within a reasonable time?

Findings of Fact

3. The Respondent announced the need for redundancies on 14 September 2020
4. The Claimant had first redundancy consultation meeting 28 September. It was explained that his role would be redundant from 31 October 2020.
5. The Claimant had second redundancy consultation meeting 5 October.
6. Third and final redundancy consultation meeting 23 October. The Claimant did not accept another, lower, role, and was told his current role would be redundant on 31 October.
7. The Claimant appealed his redundancy.
8. The Claimant requested furlough on 2 November.
9. The Respondent confirmed the Claimant would not be furloughed on 12 November.
10. Documents were sent to the Claimant confirming a furlough arrangement, on or around 14 November. These were sent in error.
11. An appeal meeting was held on 30 November and the notes from this were sent to the Claimant on 6 December. The Claimant returned these, with his comments, on 7 December.
12. The Claimant received a letter from the Respondent on 21 January 2021 [76]. This incorrectly gave an EDT of 7 December 2020. Attached to this was the Redundancy Statement [72], which confirmed the EDT of 31 October.
13. A response to the Claimant's appeal was sent to him on 26 January. The Claimant's appeal was not upheld.
14. The Claimant raised issues with this decision via an email to the Respondent on 29 January, and the Respondent responded on 3 February.
15. On 4 February the Claimant submitted a grievance to the Respondent.
16. The Claimant entered into ACAS Early Conciliation on 30 March.
17. ACAS Early Conciliation ended on 11 May with the issue of a certificate by e-mail.
18. The Claimant issued his ET1 on 8 June.

The Law

19. The relevant section of the Employment Rights Act 1996 (“ERA”) is section 111, which states:

111. Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) 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.

Discussion

20. In determining the EDT, I have been guided by *Fitzgerald v University of Kent at Canterbury* 2004 ICR 737, CA and *Horwood v Lincolnshire County Council* EAT 0462/11.

21. The upshot of these cases is clear: once the employment has come to an end, it is not open to the parties to decide to rewrite history and treat the employment as having ended on a date other than that on which it actually did end. The EDT is a statutory construct that depended on “what has happened between the parties over time”, and not on what they might agree to treat as having happened, or unilaterally think might have happened.

22. In light of the above, I conclude that mistakes and erroneous conduct by either party cannot alter the statutory EDT.

23. I am also guided by *Calor Gas Ltd v Dorey* EAT 651/97, in which an employee actually continued to work beyond the date of the EDT. The EAT held that this did not alter the EDT.

24. The Claimant was told in his first and in his final consultation meeting that his role would be redundant from 31 October 2020. This was the date that was in the mind of the Respondent as when the Claimant’s role would come to an end. This was explained to the Claimant. In evidence, the Claimant accepted that he understood at the consultation meetings that his redundancy would take effect from 31 October.

25. I therefore conclude that the Claimant's EDT was 31 October 2020, meaning that the Claimant needed to submit his ET1 or enter into the ACAS EC process by 30 January 2021.
26. The Tribunal must now turn to whether it was reasonably practical for the Claimant to have submitted his claim within this time.
27. As found above, the Claimant knew and understood that his EDT was 31 October 2020.
28. The Claimant was also informed on 12 November that furlough wasn't going to be offered to him. I accept that there was a degree of confusion caused by the Respondent's errors in then placing the Claimant on furlough when he should not have been. Nonetheless, I find that the Claimant was aware that he was made redundant, as he was appealing this decision. Notice had also been given verbally, although I accept that the Claimant wasn't informed of this in writing.
29. The letter of 21 January caused further confusion by given an EDT of 7 December in error. It did, however, include a Redundancy Statement which confirmed the EDT of 31 October. I find that there could be no doubt in the Claimant's mind that this point that he had been made redundant and that the EDT was 31 October.
30. The Claimant was still in time to submit his claim at this point, however he chose to attempt to resolve matters with the company directly.
31. While I can understand and appreciate his efforts in this regard, the law at s.111 ERA is clear. A claim must be submitted within three months of the EDT unless it is not reasonably practical to do so. There is no provision for what is just and equitable. The Claimant may find this harsh, but it is the role of the Tribunal to apply the law as it stands.
32. As he was able to submit the claim himself on 8 June, I conclude that he was able to submit a claim without assistance. I can find no reason as to why it would not be practical to submit the claim by 21 January.
33. Even if the Claimant had accepted the incorrect date of 7 December as the correct EDT, this would have meant he would have needed to commence his claim by 6 March, and he did not do so until 30 March.

Conclusion

34. Accordingly, I find that the claim was submitted out of time, and the Employment Tribunal therefore has no jurisdiction to hear this claim.

35. The claim is therefore dismissed.

Employment Judge King
Date: 09/03/2022

REASONS SENT TO THE PARTIES ON
11 March 2022 By Mr J McCormick

FOR THE TRIBUNAL OFFICE