



EMPLOYMENT TRIBUNALS

Claimant: Mr A Rump

Respondent: David Dove Recovery Limited

Heard at: Newcastle CFCTC **On:** 1 November 2022

Before: Employment Judge Arullendran

Representation:

Claimant: No attendance

Respondent: No attendance

JUDGMENT

The Judgment of the Employment Tribunal is that all the claimant's claims are dismissed on the grounds that they have been submitted outside the primary time limit stipulated in section 23(2) of the Employment Rights Act 1996 and Regulation 30(2) of the Working Time Regulations 1998.

Reasons

1. There was no attendance by the claimant or the respondent at the hearing today, which was listed to start at 10 AM and had a time estimate of two hours. The Tribunal left telephone messages this morning for both parties asking them to contact the Tribunal as a matter of urgency and email messages were also sent to the parties asking them if they were intending to attend the hearing today. The claimant replied by email at 10:30 AM stating "I'm currently at work" and failed to provide any explanation why he had not made arrangements to attend this hearing. The respondent telephoned the Tribunal at around 10:40 AM and said that he thought the hearing was taking place on 2 November 2022 and that he had recently undergone surgery.
2. Given that neither party made an application for this hearing to be adjourned to a later date and, taking into account Rule 47 of the Employment Tribunals Rules of

Procedure and the overriding objective, I decided to proceed with the hearing in the absence of both parties.

3. I have taken into account information provided by the claimant on his ET1 form and that provided by the respondent in their ET3 form. The claimant's employment with the respondent came to an end on 21 April 2022. He commenced early conciliation on 11 May 2022 and was issued with the ACAS early conciliation certificate on 16 May 2022. The initial limitation date for submission of his claim was 20 July 2022 and the new limitation period, taking into account the five days of early conciliation, was therefore 25 July 2022. The claimant submitted his application to the Employment Tribunal on 11 August 2022, which is 16 days out of time. The claims are for holiday pay and an unspecified claim for "other payments", which appears to relate to wages.
4. The Working Time Regulations 1998 and the Employment Rights Act 1996 contain mirror provisions relating to limitation periods and state "... an employment tribunal **shall not** consider a complaint under this section unless it is presented before the end of the period of three months beginning with ..." either the date of the non-payment or deduction from wages. There is a discretion to extend the primary time limit in cases where it was not reasonably practicable for the claim to have been submitted in time and where the further delay was reasonable.
5. The claimant has not provided any information in his claim form, or in any other correspondence, to explain why his ET1 form was submitted 16 days out of time. The claimant was notified of today's hearing by the Tribunal on 17 October 2022 and there is nothing to suggest that he was unaware of today's hearing. There is no evidence in front of me that the claimant was unable to arrange his current working time in order to attend this 2-hour hearing. In the circumstances, it appears that the claimant has elected not to attend today and he has elected not to provide any further information about the delay in submitting his claim form in time. Therefore, I find that it was reasonably practicable for the claimant to have submitted his claim in time and this Tribunal "shall not" consider any of his complaints, in accordance with section 23(2) of the Employment Rights Act 1996 and Regulation 30(2) of the Working Time Regulations 1998.
6. All the claimant's claims are dismissed.

Employment Judge Arullendran

Date: 1 November 2022