



EMPLOYMENT TRIBUNALS

Claimant: Mr Riley

Respondent: Liverpool Brewing Company

Heard at: Manchester

On: 10 February 2023

Before: Employment Judge KM Ross

Representation

Claimant: in person

Respondent: Mr Nagel, consultant

UPON APPLICATION made by the respondent by letter dated **13 November 2022 and 3 February 2023** to reconsider the judgment dated 11 October 2022, sent to the parties on 24 October 2022 and written reasons dated 9 November 2022 sent to the parties 16 November 2022 under rule 71 of the Employment Tribunals Rules of Procedure 2013.

JUDGMENT ON RECONSIDERATION

1. The respondent's application fails.
2. The claimant's claim was presented within time for the reasons set out below.

REASONS

1. In the Judgement sent to the parties on 24 October 2022, for the reasons sent to the parties on 16 November 2022, (oral reasons having been given at the hearing), I found that the claimant's claim had been presented within

time.

2. In a carefully reasoned application the respondent submitted that I had erred in my calculation of the time limit extension under section 207B (4) Employment Rights Act 1996.
3. I invited the claimant to respond to their application. When he did so he reiterated that the ACAS early conciliation certificate was sent to him by email on 1 February 2022, although the certificate was dated 31 January 2022. This information was critical to the determination and calculation of the time limits.
4. Therefore, a reconsideration hearing was listed with both parties attending on 10 February 2023. The claimant Mr Riley gave brief evidence (which was not disputed) that he received the ACAS early conciliation certificate by email on 1 February 2022. This detailed information was not available at the original hearing because a copy of the full email sending the certificate to the claimant on 1 February 2022 was not included and neither party or the Judge raised this matter.
5. There was no bundle of documents for this reconsideration hearing which took place by videolink, Cloud Video Platform, CVP. All parties had the respondent's application for reconsideration dated 30 November 2022, further submission from the respondent dated 3 February 2023 and a copy of the email from ACAS sending the EC certificate to the respondent on 31 January 2022. From the claimant I had his submission of the 21 December 2022 and further submission of 29 January 2023 including his timeline together with a copy of the email he received from ACAS (attaching the EC certificate) dated 1 February 2022.
6. I therefore revisited the calculation of time limits.
7. There is no dispute in this case that the claimant's effective date of termination "EDT" was 24 September 2021. There was no dispute that the ordinary limitation expired on 23 December 2021. There was no dispute that the claim was presented on 1 March 2022.
8. The relevant law for calculating extension of time in accordance with the Early Conciliation Rules can be found in the Early Conciliation Scheme which is set out at s18A and 18B Employment Tribunals Act 1996 and in the Early Conciliation Rules of Procedure "EC Rules" contained in the schedule to the Employment Tribunals (Early Conciliation Exemptions and Rules of Procedure) Regulations 2014 and at s207B(2),(3) and (4) Employment Rights Act 1996.
9. As the respondent helpfully identified in their application, I must first identify Day A.

S207B 2(a) Employment Rights Act 1996 states "*Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18 A of the Employment*

Tribunals Act 1996(requirement to contact ACAS before instituting proceedings) in relation to the matter of which the proceedings are brought”

10. There is no dispute in this case that Day A is the date the EC certificate states early conciliation commenced, on 21 December 2021.
11. I must now identify Day B.
12. S207B 2(b) Employment Rights Act 1996 states “*Day B is the day on which the complainant or applicant receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection 4 of that section.*”
13. The respondent identified Day B in their application for reconsideration as 31 January 2022: that was the date on the ACAS early conciliation certificate. I find it was also the date the respondent received the certificate by email.
14. However, as a result of the respondent’s application for reconsideration and the resulting submission from the claimant it became clear that there was a dispute about the date of Day B.
15. At the reconsideration hearing having heard the claimant’s evidence I find as a fact that the claimant received the ACAS early conciliation certificate on 1 February 2022 and accordingly that is Day B.
16. I find that the claimant received an email from ACAS dated 1 February 2022 at 00:00 hours. I find the email was sent from an ACAS email address: case@acas.org.uk. I find attached to the email was the EC certificate sent by Mr Whiteman of ACAS, certificate number R204895/21/06.
17. I find that the respondent had received an email from ACAS immediately prior, on 31 January 2022 at 23:59:59 from the same email address with an attachment of an EC certificate also with certificate number R204895/21/06, also from Mr Whiteman of ACAS.
18. I have no doubt that the email to the claimant was genuine and the respondent did not challenge the veracity of the email. I therefore turned to the rules which determine when the claimant is treated as receiving the certificate in accordance with s207B(2)(b) ERA 1996.
19. I remind myself that these provisions are contained within the Early Conciliation Rules of Procedure described above. The rules state that so far as the issuing of the certificate is concerned, it must show the date on which it was issued and the means by which it was sent to the prospective claimant and respondent i.e. email or post. See Rule 8.
20. There is no dispute that the claimant received the certificate by email. Rule 9(3) of the EC Rules states “*an early conciliation certificate will be deemed received (a) if sent by email, on the day it is sent.*”

21. I am satisfied that although the EC certificate is dated 31 January 2022 and was sent to the respondent attached to an email of 31 January 2022, just before midnight on that date, I must consider when the claimant was sent the certificate. The evidence shows that the claimant received the email on 1 February 2022 at 00:00 hours. In accordance with rule 9(3) EC Rules, I am satisfied that is the date he is treated as receiving the certificate for the purposes of s207B(2)(b) ERA 1996.
22. The respondent sought to argue that the email the claimant received on 1 February at 00:00 hours must have been sent on 31 Jan 2022. There is no documentary evidence to suggest the time when the email left the ACAS email address. In addition when looking at the spirit of the rules, I have taken into account that when a certificate is sent by post it is deemed received on the day it would be delivered in the ordinary course of the post, Rule 9(3) (b) EC Rules.
23. I therefore find that the email was sent to the claimant on 1 February 2022.
24. I now turn to section 207B(3) ERA 1996. This provision states *“in working out when the time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted”*. As the respondent correctly identified in their application this is the period when the claimant was engaged in early conciliation. Day A was 21 December 2021. The day after is 22 December 2021 and I have found day B is 1 February 2022. I find 22 December to 1 February inclusive is a period of 42 days. I must therefore add 42 days to the original limitation expiry date of 23 December 2021. The new limitation date is therefore 4 February 2022.
25. Finally I must turn to section 207B(4) ERA 1996 which states *“if a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period”*. I agree with the analysis in the respondent’s application for reconsideration but I do not agree with the date they have used for day B.
26. There is no doubt that the period beginning one day after Day A (21 December 2021) is 22 December 2021 and the period ends one month after Day B (1 February 2022) so 1 March 2022. The new limitation date falls within that period.
27. Therefore, this section applies to further extend the time limit to one month after Day B. Day B is 1 February 2022. One month after that date is 1 March 2022. The claimant presented his claim on 1 March 2022 I therefore find that the claim was presented within time.
28. This application for reconsideration was made by the respondent on the basis that I had made an error in applying the extension of time provisions in relation to early conciliation.

29. The respondent did not dispute my reasoning that the claimant is entitled in these circumstances to both the extension in 207B(3) and (4) ERA 1996 and that they are applied cumulatively. However, I accept that my reasons were insufficiently detailed and I had not applied the methodology set out by the respondent in their application and as indicated at section 207B.
30. In the course of this reconsideration my implicit assumption about day B which is not clearly expressed in my original judgement see paragraph 35, was called into question by the respondent because my analysis was incomplete.
31. On further scrutiny of the email actually sent to the claimant (the full detail showing the time the email was received was not clear in the original bundle) I have found as a fact that the email was sent on 1 February 2022 for the purposes of the date the claimant received the certificate-Day B. That information affects both the calculation of the number of days the clock was stopped for the purposes of s207B (3) and also affects the extension of time permitted under 207B(4).
32. So far as reconsideration is concerned. I must consider whether it is in the interests of justice for the original decision to be reconsidered.
33. I am satisfied that the respondent had a legitimate concern about the method and reasoning adopted in my earlier Judgement when applying the early conciliation extension of time. On further scrutiny of the evidence, I am satisfied that the claimant's claim was within time for the reasons given above.
34. Therefore, the respondent's application that the claimant's claim was out of time because in their view, Day B was 31 January 2022 and time expired 1 month later on 28 February rendering the claimant's claim out of time, fails.

Employment Judge KM Ross
10 February 2023

JUDGMENT SENT TO THE PARTIES ON

15 February 2023

FOR THE TRIBUNAL OFFICE