



EMPLOYMENT TRIBUNALS

Claimant

Mr Pawel Burzec
Mr M Skulski

v

Respondent

(1) Alma Ironcraft Limited
(Creditors Voluntary Liquidation)
(2) Secretary of State for BEIS

Heard at: Norwich

On: 20 January 2023

Before: Employment Judge Postle

Appearances

For the Claimants: In person

For the First Respondent: Did not attend and was not represented

For the Second Respondent: Did not attend and was not represented

JUDGMENT

The Claimant's claims for redundancy payment and holiday pay are out of time, thus the Tribunal has no jurisdiction. There being no grounds to extend time on the just and equitable principles.

REASONS

1. The Claimant is pursuing a claim against his former employer, the First Respondent, for a redundancy payment and now a claim against the Secretary of State for payment under §.166 and 167 of the Employment Rights Act 1996 ("ERA").
2. The Secretary of State cannot make a payment unless the Claimant satisfies the conditions in §.164(1) and 166 ERA 1996.
3. It is accepted that the Claimant's former employer is insolvent, as defined by s.166(5) ERA 1996, having entered into a Creditor's Voluntary Liquidation on 13 January 2022. However, the second Respondent resists the claim on the grounds that it is out of time and was not lodged by the Claimant within the time limits set out in s.164(1) ERA 1996.

4. Particularly s.164 ERA 1996 provides,
- (1) An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date-
 - (a) the payment has been agreed and paid,
 - (b) the employee has made a claim for the payment by notice in writing given to the employer,
 - (c) a question as to the employee's right to, or the amount of, the payment has been referred to an Employment Tribunal, or
 - (d) ...
 - (2) An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee-
 - (a) makes a claim for the payment by notice in writing given to the employer,
 - (b) refers to an Employment Tribunal a question as to his right to, or the amount of, the payment, or
 - (c) presents a complaint relating to his dismissal under section 111,
- and it appears to the Tribunal to be just and equitable that the employee should receive a redundancy payment.
5. It is clear the Claimant was made redundant on 31 October 2020, as set out in the Claimant's claim form. The First Respondents were not made formally insolvent within the meaning of §.166, 167 and 183 ERA 1996 until it entered into a Creditor's Voluntary Liquidation on 13 January 2022.
6. On 8 February 2022, the Claimant's claim form was received by the Secretary of State for payment under §.166 and 167.
7. The Claimant's claim for redundancy payment was rejected by the Secretary of State on 9 February 2022.
8. The Claimant had filed a claim at the Employment Tribunal on 13 October 2021.
9. However, as the Claimant has taken none of the steps required in s.164 ERA 1996, within the relevant time limit, it is clear the Claimant has no right to a redundancy payment from the employer and so the Tribunal has no jurisdiction to make such an award against the Secretary of State under §.166 and 167 of the ERA 1996.

10. The Claimant having advanced no reasons for the late filing of the Application, other than he had left matters to his wife to deal with.
11. There are no grounds advanced justifying the Tribunal to exercise its discretion and extend the time for filing.
12. The claim for a redundancy payment is therefore dismissed.

Employment Judge Postle

Date: 29/3/2023

Sent to the parties on: 14/4/2023

15/4/2023

For the Tribunal Office.