



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss A Munteanu

**Respondent:** A A Franchise Limited

## JUDGMENT

The claimant's application for reconsideration of the judgment sent to the parties on 9 October 2022 is refused.

## REASONS

1. There is no reasonable prospect of the original decision being varied or revoked, because the ET1 was submitted out of time.

2. The claim was struck out as it appeared that the claimant was not actively pursuing it. In her application for reconsideration, she explained that the tribunal emails had gone to her spam folder and she did wish to proceed with the claim.

3. On reviewing the file for this hearing the following relevant dates were noted:

Dates of employment	4 January 2020 to 21 July 2021
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ACAS EC	17 – 22 September 2021
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Claim issued	17 December 2021
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4. On hearing from the claimant at the reconsideration hearing there were no reasons given as to why it had not been reasonably practicable to issue the claim in time. The claimant did not know about time limits but had taken no active steps to find out about the procedure for lodging the claim. She had however invoked the ACAS Early Conciliation process.

**Relevant Law**

**Employment Rights Act 1996**

**5. Section 23 Complaints to employment tribunals**

- (1) A worker may present a complaint to an employment tribunal —
  - (a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),
  
- (2) Subject to subsection (4), 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—
  - (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
  
- (3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).
  
- (4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

**Section 207B - Extension of time limits to facilitate conciliation before institution of proceedings**

- (1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).
  
- (2) In this section—
  - (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
  
  - (b) Day B is the day on which the complainant or applicant concerned 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.

- (3) In working out when a 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.
- (4) 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.
- (5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

### **Conclusions**

- 6. The primary limitation period before the application of s207B expired on the 20 October 2021, 3 months after the effective date of termination of employment.
- 7. Applying S207B (3) the 5 days of ACAS EC is not counted and the limitation period therefore actually expired on the 25 October 2021.
- 8. It then needs to be considered whether section 207B (4) Employment Rights Act 1996 applied. The time limit (if not extended by that subsection) of 25 October 2021 would not have expired during the period beginning with Day A (17 September 2021) and ending one month after Day B (22 September 2021) and therefore subsection 4 has no application.
- 9. The claim form issued on the 17 December 2021, should have been received by the 25 October 2021 and was therefore received out of time. No reasons have been put forward as evidence that it was not reasonably practicable to have presented it in time.
- 10. The tribunal does not have jurisdiction to determine the claim and it is therefore not in the interests of justice for the strike out of the claims to be set aside.

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Employment Judge Laidler

Date: 9 May 2023.

JUDGMENT SENT TO THE PARTIES ON

15 May 2023

FOR THE TRIBUNAL OFFICE