



EMPLOYMENT TRIBUNALS

Claimant: Mr S C Kemp

Respondent: The Quality Koi Company Limited

HELD at Leeds

ON: 2 May 2023

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Did not appear, was not represented and did not file a response

JUDGMENT

1. The claims of unfair dismissal, redundancy and no notice pay are hereby dismissed on the grounds that the claimant did not before the end of the period of three months beginning with the effective date of termination present his claims and that the Tribunal did not consider that it was not reasonably practicable for the complaint to be presented before the end of that period, taking into account the extension of time limits to facilitate conciliation for the institution of proceedings.
2. The proper title of the respondent is The Quality Koi Company Limited.

REASONS

1. **Claims**

- 1.1. Unfair dismissal.
- 1.2. Redundancy.
- 1.3. No notice pay.

2. **Issues**

The issues in this case:

- 2.1. Relate to whether the claimant presented his complaint in time.
- 2.2. And if the claimant did not present his claim in time whether it was reasonably practicable for him to have done so and if not whether time for presenting the claim should be extended by the Tribunal.

3. **The Law**

- 3.1. This is contained in section 111(2) and (2A) of the Employment Rights Act 1996 (ERA).

4. **Facts**

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed by the respondent as a sales person from a day in June 2014 up to and including 23 July 2022 when he was dismissed.
- 4.2. The claimant had three months from the effective date of termination until 22 October 2022 plus an extension of time for early conciliation which commenced on 12 October 2022 with a certificate dated 14 November 2022.
- 4.3. The claimant had until 13 December 2022 to issue his complaint but did not present it until 19 December 2022, so he was six days' late.
- 4.4. The claimant spent the majority of his working life as a shop fitting joiner and the Tribunal finds that he was equipped to understand that there were requirements for time limits in the Employment Tribunal.
- 4.5. In the first instant the claimant said that he did not know there were time limits to file his complaint, although he received a letter from the Tribunal dated 12 April 2023 stating that this hearing would be converted to a three hour public preliminary hearing in order that the Tribunal would have sufficient time to consider whether, having regard to the effective date of termination, the claimant's employment and the time limit required consideration by the Tribunal as to whether it had jurisdiction to hear the case. The claimant tried to tell the Tribunal that this letter in fact granted him extra time but when the Tribunal went through the letter with the claimant he realised that was not what the letter said at all and it was clear that this hearing was to deal with the question of the time limit.

- 4.6. The claimant then changed his mind about when he first knew about the time limit and this he said was when he received the claim form at some indeterminate time from and after 5 December 2022. From that moment he said he was clear that he knew there was a time limit but he could not remember when he sent the claim form off and in particular whether he sent it off before 13 December 2022. He merely hoped, to use his words, that he had sent the form off within the time limit.
 - 4.7. The Tribunal asked the claimant if the claim form was late why it was late and the claimant said it was because of the postal strike. The claimant was unable to say when the dates of the postal strike were.
 - 4.8. In short the claimant neither had any evidence as to why he was late filing his complaint nor could he give any reasonable explanation for it
5. **Determination of the Issues (After listening to the factual evidence made by and on behalf of the claimant):**
- 5.1. There is no doubt that the claimant was late to present his claim, namely, six days' late.
 - 5.2. There is no doubt that the claimant knew of the time limit within the period when he should have presented his claim, that is before 13 December 2022 and he received his claim form on or about 5 December 2022.
 - 5.3. The claimant was unable to give facts or any reasonable explanation as to why he failed to lodge his claim in time.
 - 5.4. The claimant was on notice from 12 April 2023, when he received the Tribunal letter, about the nature of this hearing and yet failed to prepare evidence in support of the reasons why he was late in filing his claim form.
 - 5.5. The Tribunal does not consider it reasonable to extend time until 19 December 2022 because it finds that it was reasonably practicable for the claimant to present the claim before the end of the period of three months plus extension for early conciliation.
 - 5.6. In all the circumstances all of the claims in this case are dismissed on the grounds that they are out of time.

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Employment Judge Shulman

Date: 9 May 2023