



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4100282/2023**

**Final Hearing held  
On the Cloud Video Platform on 3 June 2023**

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**Employment Judge A Jones**

**Ms M Naranjo**

**Claimant  
In person**

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**The Mind's Well**

**Respondent  
No appearance**

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**Judgment**

The Tribunal does not have jurisdiction to consider the claimant's claim.

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**Reasons**

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1. The claimant presented a claim on 15 January 2023 claiming a redundancy payment. The claimant's employment had terminated on 1 February 2022. The claimant was a director of the respondent company but also said she was an employee. No response was received from the respondent. The respondent was in voluntary liquidation.
2. The claimant was informed that while no response had been received to her claim, there was insufficient information to issue a judgment in terms of Rule 21 of the Employment Tribunal (Practice and Procedure) Regulations 2013 Schedule 1.

3. A hearing was listed to take place, but the claimant sought to give evidence from Spain at that hearing. The hearing was therefore postponed and relisted and was conducted on the Cloud Video Platform once the claimant had returned to the United Kingdom. In the meantime, the claimant had been asked to set out the sums being sought and the basis on which she said she was entitled to these sums.  
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4. The claimant's position was that she had applied to the National Insurance Fund for a redundancy payment, but they had refused her application on the basis that she was not an employee or worker, but a director of the company and therefore not entitled to any payments.  
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5. The claimant sought to claim a redundancy payment, holiday pay and unpaid wages on the basis that she said she was not paid an hourly rate equivalent to the National Minimum Wage prevailing at the time.
6. The claimant gave evidence at the hearing. I informed her that if the Tribunal had jurisdiction to consider her claim, it may be appropriate to join the Secretary of State as a respondent in the case as the decision to reject her claim to the National Insurance Fund meant that he had an interest in the matter.  
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7. I heard evidence from the claimant as to the delay in lodging her claim. She explained that she had instructed agents to advise her on an application to the Redundancy Payment Fund and that once her application had been refused, she was advised to lodge a claim with the Tribunal and informed that any claim would have to be lodged by 3 February 2023, although it was not clear on what basis that information was provided to her. At one stage the claimant suggested she had been told she could not make an application to the Tribunal until her claim to the Fund had been resolved although she then said that she was not sure if she had explicitly been given this information.  
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8. The claimant indicated during the hearing that she had made a request of the respondent to pay her a redundancy payment. She undertook to send the relevant documentation.  
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9. While the claimant did subsequent to the hearing send some further documentation, there was nothing in that which could be said to amount a to a written claim for payment in terms of section 164(1)(b) Employment Rights Act 1996 ('ERA').

5 10. In terms of section 164 ERA, any claim for a redundancy payment should be lodged with the Tribunal within six months, unless certain other conditions are satisfied. One of those conditions is that within the six-month period the claimant had made a claim in writing which has been given to the employer.

10 11. The claimant's claim was lodged almost a year after the claimant's employment had terminated. She did not make a claim in writing in relation to any payments to the respondent, no doubt because she was a director of the respondent and had decided that the business should be wound up. She took advice and sought to recover sums from the National Insurance Fund. However, she did not at the same time lodge any claim with the  
15 Employment Tribunal.

12. Her claim is therefore out of time and there was no evidence from the claimant to suggest that it would be just and equitable to extend that time limit. The claimant was taking professional advice. That advice in November  
20 2022 appears to have been incorrect. However, the claimant does not appear to have considered lodging a claim with the Tribunal until after her claim was rejected by the National Insurance Fund. The claimant gave evidence that she was one of two directors of the company and had originally set the company up. There was nothing to suggest she could not  
25 have taken advice on the matter at an earlier stage.

13. The other claims brought by the claimant relate to unpaid wages in respect of which any claim should have been lodged within 3 months of any alleged deduction. In addition, in relation to such a claim the Tribunal's discretion is more limited in determining whether it should consider a claim on the basis  
30 that it was not reasonably practicable to lodge a claim within time. There was no evidence from the claimant to suggest it would not have been

reasonably practicable for her to lodge a claim in time. While the claimant did give evidence that she was unwell for a period, it was during this period that she instructed agents to make an application to the National Insurance Fund on her behalf.

- 5 14. In these circumstances the Tribunal has no jurisdiction to consider her claim.

**Employment Judge: A Jones**  
**Date of Judgment: 14 June 2023**  
**Entered in register: 16 June 2023**  
**and copied to parties**