



EMPLOYMENT TRIBUNALS

Claimant: Mr A Roberts

Respondent: Welbeck House Limited (in liquidation)

Heard at: Nottingham **On:** 20 April 2023

Before: Employment Judge Varnam

Representation

Claimant: No appearance or representation

Respondent: No appearance or representation

JUDGMENT

1. The Claimant's claim for a declaration and protective award pursuant to section 189(2) of the **Trade Union and Labour Relations (Consolidation) Act 1992** is dismissed.

REASONS

1. This matter was listed before me at 10am today for an open preliminary hearing to decide whether the Claimant's claim for a protective award should be struck out as it appeared to have been presented out of time.
2. The Notice of today's hearing, which is dated 23 January 2023, expressly stated that the hearing would take place at 10am today, gave the address of the Tribunal Hearing Centre at which the hearing would take place, and asked both parties to arrive at the Tribunal at least 30 minutes before the hearing was due to start. Notwithstanding this instruction, neither party had attended by 9.30am, nor indeed by 10.40am, the point at which I decided to dismiss the claim.
3. Rule 47 of the Employment Tribunals Rules of Procedure 2013 provides that if a party fails to attend a hearing, then the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, the Tribunal is required to consider any information which is available to

it, after any enquiries that may be practicable, about the reasons for the party's absence.

4. The Respondent's non-attendance was unsurprising, given that the Respondent is in liquidation and that the joint liquidator had e-mailed the Tribunal on 9 December 2022 indicating that it was not his intention to incur costs in dealing with the claim.
5. There was nothing before me to explain the Claimant's absence. Upon consideration of the Tribunal file, I can see that the Notice of today's hearing was sent to the Claimant by e-mail at 4.52pm on 23 January 2023. It may also have been sent by post, but in any event I am satisfied that the Claimant should have received the e-mail, since he had himself corresponded with the Tribunal by e-mail during December 2022.
6. When the Claimant had not attended by about 10.15am today, the Tribunal clerk made efforts to contact him using two different telephone numbers. One was the number given in the Claimant's ET1, the other was a number given in a Form ET3 which, unusually, had in fact been completed and returned to the Tribunal by the Claimant himself. Neither telephone call was answered.
7. There is nothing on the Tribunal file to indicate any reason for the Claimant's non-attendance, nor does there appear to have been any contact from the Claimant to indicate that he would have difficulty in attending.
8. I waited until 10.40am before deciding what steps to take in light of the Claimant's non-attendance. This was over an hour after the parties were told to arrive at the Tribunal.
9. In the circumstances, I am satisfied that the Claimant knew or ought to have known (i) that the hearing was listed for 10am today; (ii) where the hearing was to take place; and (iii) that he needed to attend the hearing by 9.30am today. His non-attendance thus remains wholly unexplained.
10. On the face of it, the Claimant's claim was brought well out of time. The time limit for bringing a claim for a protective award is three months beginning with the date on which the last of the dismissals to which the complaint relates (i.e. the dismissal as redundant of twenty or more employees at one establishment within a period of ninety days or less) takes effect: **Trade Union and Labour Relations (Consolidation) Act 1992**, section 189(5).
11. The Claimant complains in his ET1 that he was dismissed, with his colleagues, when the Respondent company entered administration. Companies House records indicate that this occurred on 2 April 2020. It therefore appears that the three-month period for bringing a claim expired on 1 July 2020. It may be that the Claimant and his colleagues were in fact dismissed when the Respondent entered liquidation (and this appears to be what is said in the ET3 completed by the Claimant). However, the Respondent entered liquidation on 13 March 2021, so even on that basis

the three-month period for bringing a claim would have expired on 12 June 2021.

12. The Claimant underwent ACAS early conciliation between 25 and 28 October 2021, and his ET1 was received by the Tribunal on 8 November 2021. On any analysis, this appears to be at least about five months, and possibly as much as sixteen months, out of time.
13. The Claimant did not in fact raise any express claim for a protective award until he submitted an ET3, which he had completed, on 20 August 2022. I am, however, prepared to treat 8 November 2021 as the day on which he claimed a protective award. Nonetheless, this does not assist the Claimant on the time limit point.
14. It may be that, if the Claimant had attended, he would have put forward some argument that time began to run later than the dates that I have set out above. However, no basis for such an argument is apparent from any of the documents filed by the Claimant.
15. Time for bringing a claim could be extended if the Claimant showed (i) that it was not reasonably practicable to bring his claim within the threemonth primary time limit, and (ii) that he brought his claim within such further period as the Tribunal considered reasonable. However, where the Claimant has not attended and has given no evidence in support of any request for an extension of time, it is hard to see how he could satisfy me that time should be extended.
16. In circumstances where the Claimant's absence is unexplained, where on the face of it his claim for a protective award was brought well out of time, and where his absence renders impossible a fuller exploration of the time limit issues than that which I have set out above, I consider that it is appropriate to dismiss the Claimant's claim pursuant to rule 47.
17. I note that the Claimant has also sought to recover a week's unpaid wages, notice pay, and holiday pay. However, by an e-mail sent to the Tribunal on 23 December 2022, he confirmed that these had been received, and that he was now only pursuing a protective award. I treat this as a withdrawal of those other claims, albeit that the Tribunal has not yet issued a judgment dismissing them. In the circumstances, this judgment brings these proceedings to an end.

Employment Judge **Varnam**
20 April 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON
16 May 2023

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FOR THE TRIBUNAL OFFICE