



EMPLOYMENT TRIBUNALS

Claimant: Miss J Taylor

Respondent: Mr Connor Cross

AT A HEARING

Heard at: Leeds by CVP video conferencing **On: 6th September 2024**
Before: Employment Judge Lancaster

Representation

Claimant: In person

Respondent: No appearance entered and did not attend

JUDGMENT

1. The Claimant is not deprived of any right to a redundancy payment by reason of her not having presented an Employment Tribunal claim until 17th May 2024, more than 6 months after the relevant date of termination, 23rd September 2023, because it is just and equitable that she should receive a redundancy payment: section 164 (2) Employment Rights Act 1996
2. The case is otherwise adjourned out of today's list, reserved to Employment Judge Lancaster.

REASONS

1. The Claimant worked for the Respondent, a sole trader, as a sales assistant on his market stall from at least 21st July 2017 (as stated in the claim form) but potentially from August 2016 – the Claimant must check the dates.
2. On 23rd September 2023 Mr Cross told her verbally that he was going bankrupt, and that is the effective date of termination. He ceased trading and there is in law a presumption that the dismissal was by reason of redundancy.
3. Mr Cross, whilst assuring the Claimant that she would therefore receive a redundancy payment through the Redundancy Payments Office delayed in providing the necessary information for her to submit such a claim to be paid out of government funds. When he did provide a "cn" number as requested this was not correct. He did not make any payment personally.

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4. An official at the Redundancy Payments Office, being helpful, did then send a link to the Claimant so that she might make an Employment Tribunal claim, which she submitted on line on 17th May 2024.
5. Although the claim referring the question of her right to a redundancy payment was submitted outside the primary 6 month time limit (section 164 (1) Employment Rights Act 1996) it was presented within the further 6 months immediately following the expiry of that primary period.
6. It is clearly just and equitable that the Claimant should receive the statutory redundancy payment to which she is entitled having lost her employment of some six or seven years.
7. The precondition for claiming a redundancy payment in the Tribunal under section 164 (2) (c) has therefore already been satisfied, so that the Claimant could now submit a claim at any time
8. On this Claim form (ET1) the Claimant however ticked the box to say that she had an exemption from obtaining an ACAS early conciliation certificate, namely that her employer had “already been in touch with Acas”.
9. The Respondent failed to submit a Response (ET3) and therefore took no jurisdictional point on the prospects of success as he might have done . It would not, of course, have been open to hm at that stage to seek to argue that the claim should in fact have been rejected under rule 10 or 12 of the Employment Tribunals (Constitution and Rule of Procedure) Regulations 2013 : *Clark and ors v Sainsbury’s Supermarkets Ltd 2023 ICR 1169, CA.*
10. Employment Judge Jones, although he did not issue a strike-out notice for lack of jurisdiction under rule 27, as well as advertng to the extension of time point which would have to be determined at the final hearing did also identify the potential issue in that under regulation 3 (1) (c) of the Employment Tribunals (Early Conciliation & Rules of Procedure Regulations) 2014 it is for the Claimant to show that the Respondent has contacted ACAS in relation to a dispute.
11. The Claimant was accordingly informed by letter sent by email on 17th August 2024 that at this listed hearing “she will have to explain on what basis she believes her employer applied for EC. The case may be struck out if the exemption is not established.”
12. Although the Claimant is not presently able to show that she is entitled to this exemption, she would of course be perfectly entitled to approach ACAS now and submit a fresh claim relying upon a certificate of early conciliation the number of which she would then enter at section 2.3 of the ET1 form. The Claimant is still in fact within the extended 12 month time limit if she went to ACAS immediately and would then potentially be entitled to a further extension whilst the time allowed for possible conciliation took place (under section 164 (5) of the ERA) – though as I have said she has in fact already satisfied the condition for an extension of time in respect of any future claim she might bring.

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13. In the circumstances the appropriate course is to adjourn these present proceedings. If the Claimant does present a new ET1 that will be consolidated with this claim which may then be dismissed and a redundancy payment awarded on the new jurisdictionally valid claim, to which my judgment on the extension of time will necessarily still apply.

14. Any new claim will, of course, also have to be served on the Respondent who will then have time to respond. However if he again declines to submit an ET3 it should then be possible to issue a judgment in favour of the Claimant under rule 21, without the need for a further hearing.

EMPLOYMENT JU DGE LANCASTER

DATE 6th September 2024

JUDGMENT SENT TO THE PARTIES ON

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AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNALS

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