



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000194/2024

5

Held in Glasgow via Cloud Video Platform (CVP) on 2 December 2024

Employment Judge I McFtridge

10 **Mr J Gorski**

**Claimant
No appearance and
No representation**

15 **Fatlobster**

**Respondent
No appearance and
No representation**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal is that the claims are dismissed in terms of rule 47, Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

25 The claimant submitted a claim to the Tribunal in which he ticked the box to indicate he was making a whistleblowing claim. The Tribunal noted that the claim appeared to be timebarred. The claimant had noted on his ET1 that his last day of employment was 20 August 2023. ACAS conciliation appeared to have commenced on 29 June 2023 and ended on 10 August 2023. The ET1 claim was not submitted until 23 February 2024. The claim was provisionally accepted on the basis that the issue of timebar would require to be dealt with later. The respondent was designated as Fatlobster, 157 Hope Street, Glasgow, G2 2UQ. Initially, an ET3 was lodged on behalf of a company called LobLob Limited (SC726561) who indicated that they were the employer and they did not intend to resist the claim. They indicated that they had ceased trading. Within the rest of the ET3, they set out a defence of their position, it being unclear precisely what claims the claimant was making. The Tribunal

30

35

wrote to them asking if they had ticked the box to indicate they were not resisting the claim in error however no further correspondence was received. Thereafter, a preliminary hearing was fixed for case management purposes. Neither party turned up for the case management hearing. A further hearing was fixed which was postponed. Thereafter, a hearing took place on 24 October 2024. The claimant logged in late for this hearing. There was no appearance by the respondent. During the course of the hearing, the employment judge noted that the claims being made were automatic unfair dismissal for having made a protected disclosure and a claim for holiday pay. The claimant had indicated he was claiming holiday pay of £900. He was told he required to provide a calculation of this.

1. A hearing was fixed for 2 December 2024 in order to deal with the timebar issue. Given that the Tribunal required to arrange an interpreter, the Tribunal administration called the claimant a few days before the hearing to make sure he would be turning up. The claimant apparently confirmed that he would be appearing.
2. At the time and place fixed for the hearing, there was no appearance by or on behalf of the claimant. The clerk telephoned the claimant at around 10.05am but the call went straight to voicemail. The clerk waited with the conference room open until 10.15am but the claimant did not seek to log in.
3. In the circumstances, I decided that in terms of rule 47 it was for me to either dismiss the claim or proceed with a hearing in the absence of the parties. Before making a decision, I considered all of the information available to me.
4. I considered that I would be unable to proceed with the hearing. The case is quite clearly prima facie timebarred. Both claims ought to have been lodged or at least early conciliation started no later than 19 November 2023. This is on the basis of the leaving date given by the claimant in his ET1 of 20 August 2023. At the hearing before Employment Judge Maclean, the claimant had indicated that he had probably left employment in or about June. This would make more sense in terms of the ACAS certificate but if this were the case, the claim is even more timebarred. The only way the Tribunal would have

jurisdiction to hear the claim would be if the claimant could show that it was not reasonably practicable for him to have submitted his claim within the three month time limit and that he had submitted his claim within a reasonable time thereafter. Without evidence from the claimant, it is simply impossible for me to make such a finding.

5

5. Furthermore, I note that the ET3 claim form was submitted on behalf of a company, LobLob Limited. That company was dissolved on 28 May 2024. The claim is currently directed against an entity (Fat lobster) which appears to be the name of a restaurant but does not appear to have any legal personality. If the claimant was indeed employed by LobLob Limited then the claim cannot be entertained as that company also apparently no longer exists.

10

6. In all the circumstances, it appeared to me that the appropriate course of action was simply to dismiss the claim.

15

I McFatridge
Employment Judge

20

2 December 2024
Date

Date sent to parties

3 December 2004