



EMPLOYMENT TRIBUNALS

Claimant: Mr S Bellis

Respondent: Secretary of State for Business, Innovation & Skills

HELD AT: Manchester

ON:

10 April 2017

BEFORE: Employment Judge T Ryan

REPRESENTATION:

Claimant: In person

Respondent: No appearance

JUDGMENT

The Tribunal does not have jurisdiction to consider the claimant's complaint under section 188 of the Employment Rights Act 1996.

REASONS

1. By a claim presented to the Tribunal on 6 February 2017 Mr Bellis made a complaint that the Secretary of State had failed to make a payment to him under Part XII of the Employment Rights Act 1996.
2. The facts set out below are as stated to me by the claimant.
3. The claimant had worked for a company which went into receivership on 2 May 2016.
4. He was not then but immediately thereafter joined UCATT. On his behalf they made an application to the respondent under section 182, based upon his employer's insolvency, for payment of debts which the claimant identified in his claim form as notice pay, holiday pay and arrears of pay.

5. The claim was rejected by the Secretary of State by a letter dated 18 May 2016. The letter informed the claimant that if he was not happy with the decision he would need to make a claim to the Employment Tribunal. It told him that he had three months to apply to the Tribunal. The claimant tells me, and I accept for the purposes of this hearing, that he received the Secretary of State's letter about a week after the date on it. If that is right then I accept that he would have received that by the end of the following week, about 27 May 2016.
6. The claimant spoke to his union and forwarded a copy of that letter to them by email and, as he put it, "left the matter in their hands".
7. He was working at the time. He spoke to the union by way of phone call and on one occasion when they came to collect a cheque from him to lodge his claim, on about 2 February 2017, he spoke to them face to face.
8. UCATT contacted him and mentioned an ET1 form. They sent him a copy of the ET1 form which he filled in by hand and sent it back to UCATT.
9. The form that was filled in, apparently by UCATT on his behalf, is a typed form and I suspect therefore that they submitted it online and typed it. What is clear is that the claimant or UCATT approached ACAS in respect of early conciliation. The dates on the ACAS form are 22 December 2016 and 5 January 2017.
10. The claimant could not explain the delay further or in any greater detail.
11. The claimant had, under section 188, three months in which to present his complaint. Three months from 27 May would take him to 26 August 2016. The claim was presented substantially out of time and the ACAS early conciliation period does not avail him.
12. The test I have to apply is that set out in section 188, namely that the Tribunal cannot accept the claim unless it is presented within the period of three months or within such further period as the Tribunal considers reasonable in a case where it is not reasonably practicable for the complaint to be presented before the end of that period of three months.
13. The difficulty in this case is the claimant was aware of the time limit, he was aware of the rejection, he knew that he could come to the Tribunal, and he relied upon UCATT to do it for him. However, a union official not only ought to know, but in this case undoubtedly would know of the time limit from the letter. The union or the claimant simply have not progressed matters to ensure the matter was brought to the Tribunal in time.
14. The delay, with the best will in the world, is wholly unexplained. On these facts I am totally unable to say that it was not reasonably practicable for the complaint to be put in in time.
15. The claimant told me that the union said it would put together a pack of documents for him showing all the relevant dates, and clearly that has not happened. He feels that his union has let him down. He suggested to me that the matter should be put off today in order that he could then put his documents together and come back. I refused to grant a postponement today. The claimant has had notice of the hearing since 10 February 2017 and I was not by any means satisfied that if I were

to postpone the hearing today the claimant would be in a better position when it came back.

16. I explained to the claimant that I would provide a judgment and reasons in writing. Should he wish to apply for a reconsideration, having material from UCATT on which to do so, that is open to him. He will need to persuade me at that stage that it would be just and equitable for me to reconsider this judgment.

17. In the circumstances I hold that the claimant has not satisfied me that it was not reasonably practicable for the complaint to be brought within the period of three months. The tribunal does not have jurisdiction. For that reason I dismiss the claim.

Employment Judge Tom Ryan

10 April 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 April 2017

FOR THE TRIBUNAL OFFICE