

# EMPLOYMENT TRIBUNALS



**Claimant**

**MR. E. BURR**

**V**

**Respondent**

**Oak Capital LLP (in liquidation)**

**Heard at: London Central**

**On: 25 October 2018**

**Before: Employment Judge Mason**

**Representation**

**For the Claimant: In person**

**For the Respondent: No appearance or representation**

## RESERVED JUDGMENT

**The judgment of the Tribunal is that the claim is dismissed by reason of lack of jurisdiction, it having been presented outside of the statutory timescale in circumstances in which it was reasonably practicable to have been presented it in time**

## REASONS

**Background and procedure at the Hearing**

1. In this case Mr. Burr (“the Claimant”) seeks a declaration of a Protective Award having been dismissed by the Respondent by reason of redundancy on 15 August 2017 in circumstances where more than 20 other employees were also dismissed at the same time and with no prior warning or consultation.
2. On 25 September 2017, the Respondent went into administration and Mr Geoffrey Bouchier of Duff & Phelps Ltd (insolvency practitioners) was appointed Joint Administrator.
3. The Claimant presented this claim to the Employment Tribunal on 22 March 2018 and it was served on the Respondent on 4 July 2018.

4. On 5 April 2018, the Respondent went into liquidation (creditors voluntary) and Mr. Bouchier was appointed Joint Liquidator. On 13 July 2018, Mr. Bouchier wrote to the Claimant to advise that the liquidators had no objection to the claim for a Protective Award proceeding and on 19 July 2018, the liquidator wrote to the Tribunal on behalf of the Respondent to advise that the Respondent would not be defending the claim.
5. At the final merits hearing before me, there was no appearance by or on behalf of the Respondent. The Claimant was not represented. He had previously provided a witness statement (10 October 2018) and he gave further oral evidence in response to questions put to him by me and was given the opportunity to make any further submissions. The Claimant provided some copy documents
6. I reserved my decision which I now give with reasons.

### **Findings of fact**

7. Having considered all the evidence I make the following findings of fact having reminded myself that the standard of proof is the balance of probabilities.
8. On 1 November 2016, the Claimant commenced employment with the Respondent as Fuel Oil Trader. His annual salary was £100,000 per annum.
9. On 15 August 2017, he was called to a meeting in the boardroom with all other employees. The Managing Director and Sian Jones (VP at insolvency practitioners Duff & Phelps) were also present. The Claimant and other employees were informed that they were all being made redundant; most of the employees were dismissed immediately; the Claimant stayed on for a further day and his last day at work was 16 August 2017. The Claimant and other employees were given no prior warning apart from “gossip and hearsay”.
10. On 25 September 2017 the Respondent went into administration and on 2 October 2017, Mr Bouchier (joint administrator) wrote to the Claimant) enclosing a Creditor Questionnaire.
11. The Claimant told me he did not seek legal advice and having done some (belated) research on the internet he assumed he had “missed the boat” for presenting a claim. However, following a conversation with a former colleague, Mr, McCall, he contacted ACAS on 21 March 2018; an ACAS certificate was issued on 22 March 2018 by email and the Claimant presented this claim to the Employment Tribunal on 22 March 2018.
12. On 5 April 2018, the Respondent went into creditor’s voluntary liquidation.

### **Statutory Framework**

13. Section 188 of the Trade Union & Labour Relations (Consolidation) Act 1992 (“TULR(C)A”) sets out the statutory duty on employers to inform and consult their workforce about proposed redundancies:

- 13.1 Section 188(1) TULRCA states that *“where an employer is proposing to dismiss as redundant 20 or more employee at one establishment within a period 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals”*
- 13.2 Section 188(1A) sets out minimum periods of consultation:
- (i) where 100 or more redundancies are proposed at one establishment within a 90 day period, at least 45 days before the first of the dismissals takes place; and
  - (ii) otherwise, at least 30 days before the first dismissal takes effect.
14. A complaint that an employer has failed to comply with Section 188 of TULR(C)A should be brought under section 189. If a Tribunal finds that that the employer has acted in breach of section 188 it must make a declaration to that effect and may make a “protective award” under section 189(2) subject to a maximum of 90 days pay.
15. Section 189(5) TULR(C)A provides that an Employment Tribunal shall not consider a complaint unless it is presented to the Tribunal-
- a) before the date on which the last of the dismissals to which the complaint relates takes effect; or
  - b) during the period of three months beginning with that date; or
  - c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of three months, within such further period as it considers reasonable.
16. The three month time limit is extended by the ACAS Early Conciliation period (in this case one month).

### **Conclusions**

17. Applying the relevant law to the findings of fact to determine the issues, I have concluded that the Claimant’s claim was presented out of time, the time limit having expired on 15 December 2017. I have also concluded that it was reasonably practicable for him to have presented it within time.
18. The relevant test is to ask whether, on the facts of the case, it is reasonable to have expected the Claimant to present the claim within time:
- 18.1 The Claimant does not suggest that he was ignorant of his right to make a claim for a Protective Award and at one point refers to having researched the matter online.
- 18.2 He is an intelligent and well-educated man and ought to have known the time limit; he had ample time and opportunity to obtain advice and to make his own enquiries and investigations within the time limit. If a claimant is aware of his rights, ignorance of the time limit is rarely acceptable as a reason for delay as a claimant will generally be taken to have been put on enquiry as to the time limit. Once the Claimant knew of his right to claim a Protective Award, he was under an obligation to seek further information and advice about how to enforce that right.

Signed by:

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Employment Judge Mason

25 October 2018

Judgment sent to Parties on

29 October 2018