



EMPLOYMENT TRIBUNALS PUBLIC PRELIMINARY HEARING

Claimant: LT Cleaning Services Ltd

Respondent: MTM Environment Care Limited

Heard at: Leeds **On:** 2 March 2020

Before:
Employment Judge JM Wade

Representation

Claimant: Mrs S Younis (consultant)
Respondent: Mr J Peal (solicitor)

JUDGMENT

The claimant's claim pursuant to Regulation 12 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 is dismissed, having been presented outside the relevant time limit.

REASONS

Introduction

- 1 This claim is for compensation for an alleged failure by the respondent to provide Employee Liability Information ("ELI") to the claimant business, prior to the termination of a cleaning contract. The ELI concerned one employee, a Mr Parker. The issues today for me are whether it was reasonably practicable for the complaint to have been brought within the three month limit, and if not, what such further period do I consider reasonable for it to have been presented.
- 2 The chronology is not in dispute. The date of the termination of the contract was 15 August 2019 (that is the respondent contractor was not required to provide services on or after 15 August 2019). It is arguable that the date was midnight on 14 August, but I take the later date because it gives the benefit of the doubt to the claimant and was not in dispute.
- 3 The date by which this claim should have been presented was 14 November 2019.
- 4 ACAS conciliation was commenced and certificate issued on the same day: 6 January 2020. Having occurred outside the primary time limit, the conciliation gives no extension. The claim was presented on 6 January

2020, and was, on the face of the facts relied upon, outside the primary time limit.

- 5 The respondent's director, Mrs McGuinness, whose evidence today was straightforward and honest, had provided a written witness statement signed to be true and accurate. She provided further evidence answering questions of Mr Peal and the Tribunal. I also had a small bundle, and had available to me the file in Mr Parker's case, in which it was not in dispute that he had notified ACAS on 24 October, with certificates issued against both companies on 24 November 2019.
- 6 I find the following further facts based on the additional oral evidence from Mrs McGuinness. She was aware by telephone contact with ACAS of a potential claim from Mr Parker in late October or early November. That prompted her to seek legal advice from her advisers in mid to late November – in her words “more past the half way mark”. She signed up for that advice in late November or early December. The claim from Mr Parker arrived on 10 December and was passed to her advisers. Her advisers notified the Tribunal they were acting in that claim on 16 December 2020. Mrs McGuinness was then advised she could make a Regulation 12 claim and this was done on the same date as that on which the response in Mr Parker's claim was submitted: 6 January 2020 (which was the last permitted date for the response in that claim).

Submissions

- 7 The submissions on behalf of the claimant company were two fold: that the claim should be allowed to enable the claimant to be on an equal footing with the respondent; and that the overriding objective suggested an extension of time was in the interests of justice. The respondent submitted that the advisers could and should have presented the claim sooner, bearing in mind it was presented some seven weeks' late.

Conclusions

- 8 Applying the law to the facts in this case, I have to ask whether it was reasonably practicable for a Regulation 12 complaint to have been submitted by 14 November 2019. I have concluded it was not. I accept that while Mrs McGuinness had a transactional knowledge of the Regulations, she did not know from her research that such a claim could be made. She was not advised of that until after she had signed up for independent advice and she did not know of the time limit. I consider that this is not well trodden territory and that the reasonably diligent director could not reasonably have known of the claim or the time limit.
- 9 That finding does not apply to advisers. Experienced advisers, as these were, can reasonably be expected to know (or look up) that a time limit applies in the circumstances of a claim, and to know that it had expired.
- 10 There is no mention in the claim form acknowledging the time limit point or setting out the chronology of when advice was sought.
- 11 Today Mrs Younis wished to seek instructions from the file handler in this case. I did not permit that because she sought permission at the start of her submissions and after I had released Mrs McGuinness, and there was no proportionate means for such instructions to be converted into evidence which would help me with the relevant chronology. Furthermore, knowing

- the issue to be determined today, from a letter sent to the parties on 11 February, today's hearing had already been delayed because of the late service of a witness statement from Mrs McGuinness. Mr Peal then sought time to consider it at the start of this hearing.
- 12 Moreover, the claimant's advisers could have set out in the particulars of claim when instructions were obtained to enable the Regulation 12 complaint to be presented, but that was not done. In any event I had clear and honest evidence from Mrs McGuinness which expanded on her witness statement, and was consistent with the documents available on the Mr Parker file. I accepted that evidence.
- 13 On my findings, advisers knew of the actual claim from Mr Parker by 16 December at the latest, and knew of the potential for that claim some two or three weeks earlier.
- 14 What is the reasonably practicable period in which to seek urgent instructions and documents in these circumstances and to submit a claim of this kind (which was brief and straightforward in its factual matrix)? In my judgment that period is a working week at most. The claim could reasonably have been presented no later than 23 December 2019. This conclusion also gives the claimant's advisers the benefit of Mrs McGuinness' evidence that this claim would not have been necessary, were it not for Mr Parker's claim.
- 15 That may be her view for practical reasons, but it appears to be a misconceived approach to the Regulations. I did not permit Mr Peal to put a question to Mrs McGuinness that the claim was made for an ulterior purpose, because he had led no evidence to suggest that was the case on her part. Regulation 12 claims can be made whether or not there are underlying claims from staff affected by transfers, and that is all the more reason why, if such an approach is taken to delay pending receipt of such claims, matters must then be progressed urgently. That was not done here.
- 16 The submissions on the part of the claimant seek to suggest my determination is a matter of discretion. It is not. It is a matter of finding facts and applying established law to those facts. This is not an Equality Act case where there is broader discretion to fix a "just" time limit in exceptional cases.
- 17 The claim was presented outside the permitted time limit and it is dismissed.

Employment Judge JM Wade

Date 2 March 2020