



Case No. 1801015/2020

## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Darren Clarke**

v

**Kingstown Furniture Limited (In  
administration)**

**Heard By telephone**

**On: 25 August 2020**

**Before:**

**Employment Judge Wedderspoon**

**Representation:**

**Claimant: In Person**

**Respondent: No attendance**

## JUDGMENT

1. The claimant's claim for a protective award is out of time. It was reasonably practicable to bring the claim within time.
2. The claim for a protective award is dismissed.

## REASONS

### Background

1. The claimant attended the hearing by telephone today. He seeks a protective award pursuant to s.188 and s.189 (3) of the Trade Union and Labour Relations (Consolidation) Act 1992. His employer, the Respondent, Kingstown Furniture went into administration on 13 March 2019. He entered ACAS conciliation on 13 December 2019 and a certificate was issued on the same date. He issued a claim on 2 February 2020.
2. During the hearing today I informed the claimant about the strict principles to be applied when considering whether a claim is out of time or whether time can be extended. I asked the claimant to provide information about the background to his claim.
3. Mr. Clarke told me that he was a driver for the respondent for about 10 years and frequently worked away from home. He had little contact with other driver colleagues. He did not frequently look at the Facebook pages of colleagues.
4. On 13 March 2019 he was working in North Wales with his assistant. His assistant received a call from his son who was also an employee of the

respondent to inform them that the respondent had gone into administration. Following a five hour drive he attended the workplace and met with the administrator who informed the claimant he could make a claim to the government and was provided with a form for a claim for universal credit. The claimant also sought a redundancy payment via the government scheme. He says he was unaware that he could claim for a protective award and the administrator did not inform him about the right to claim a protective award.

5. Following these events, the claimant who has suffered with long term back pain and has taken medication for five years, felt his physical and mental health did suffer, particularly in the context of financial difficulties. He has not provided medical evidence to support this but I accept that he did have a difficult time following the termination of his employment.
6. He sought alternative work but has not been successful in finding another job. He is unfamiliar with his employment rights, has not been to an Employment Tribunal before, has never been a member of a trade union and there was no employee representative to his knowledge at work. He says he believes there is a Citizen Advice Bureau in Hull town centre but he did not attend there to find out if he could make any claims. He states he was naïve.
7. At the end of 2019, his sister contacted him about an article in the Hull Daily Mail newspaper which referred to former employees of the respondent receiving protective awards from the Employment Tribunal. His evidence is that within one week of reading the article he contacted ACAS.

#### The Law

8. Pursuant to s.189 (5) of the Trade Union and Labour Relations (Consolidation) Act 1992 a Tribunal shall not consider a complaint (for a protective award) unless it is presented to the Tribunal
  - (a) before 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 the date on which the last dismissals took effect; 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 period as it considers reasonable.
9. The time limit is strict and the burden rests upon the claimant to prove it was not reasonably practicable to bring the claim in time and it is a question of fact for the tribunal to decide. The issue of “practicability” is described as something that can be done (**Singh v Post Office 1973 ICR 437**) and considered to be something that is reasonably capable of being done (**Bodha Vishnudut v Hampshire Area Health Authority (1982) ICR 200**). In the case of **Porter v Bandridge (1978) ICR 943** it was held that ignorance of the law is not enough to satisfy the test. Mistaken belief or ignorance of an applicant as to his rights must be reasonable in order to support the claim that it was not reasonably practicable to present a claim in time. In the case of **Dedman v British Building and Engineering Appliances Limited (1974) ICR 53**, the Court of Appeal held that where ignorance of rights is alleged, the Tribunal should consider (a) what opportunities did the applicant have for finding out about his rights; (b) did he take them or (c) was he misled or deceived.

Conclusion

10. I accept that the claimant did have a difficult time following the loss of his job. However, I do not find that his health issues impeded him to such an extent that they prevented him from finding out about his legal rights against the respondent so that it was not reasonably feasible for the claimant to issue a claim. I take into account the fact that the claimant was able to apply for payments from the government and universal credit.
11. The case law is clear : contending ignorance of the law, is not sufficient to satisfy the test the Tribunal has to apply. Ignorance of rights must be reasonable to support the claim that it was not reasonably practicable to present the claim in time.
12. In the context of the claimant being informed that the company had gone into administration and he had a right to make a claim from the government and a claim for universal credit, in my judgment the claimant could have reasonably taken the opportunity to find out about his rights. The claimant was aware that there was a Citizen Advice Bureau in his home town centre. The claimant did not take the step to enquire about his rights or contact the Citizen Advice Bureau. The administrator did inform the claimant he could make a claim from the government and for universal credit and I do not find that the claimant was deceived. Once the claimant was put on notice of the possibilities that claims could be brought, in my Judgment the claimant could be reasonably expected to make further enquiries about claims he could make against this employer.
13. In the circumstances it was reasonably practicable to present the claim in time and I dismiss the claim because it has been brought out of time.

**Employment Judge Wedderspoon**

**Date: 27 August 2020**