



EMPLOYMENT TRIBUNALS

Claimant: Mr G Lloyd

Respondent: Swift Creative Print Ltd (in Creditors Voluntary Liquidation)

Heard at: Liverpool (remotely, by CVP)

On: 18 May 2021

Before: Employment Judge Warren

REPRESENTATION:

Claimant: In person

Respondent: Not in attendance

JUDGMENT

The judgment of the Tribunal is that:

1. It was not reasonably practicable for the claimant to bring his claim in time. It became reasonably practicable on or after 8 March 2021. The claim was presented on 8 March 2021.
2. The Tribunal has jurisdiction to hear the claimant's claim for a protective award.

Order

3. Case number 2402293/2021 is to be joined to the multiples case against Swift Creative Print Ltd (in Creditors Voluntary Liquidation) the lead case of which is numbered 2418500/20 (13930).

REASONS

1. The claimant gave evidence. I had his claim form to assist. I applied the test 'the balance of probabilities'. The burden of proof lay with the claimant. He gave entirely credible evidence. There was no representation from the respondent, who has not entered a response.

2. The respondent company ceased trading on 2 October 2020. The claimant was employed by the company as Sales Director (as an employee). He had been furloughed in March 2020. He was not a shareholder. His wife, who is extremely unwell, had been self-isolating and requires monthly hospital treatment. The claimant himself is disabled.

3. Further, as a result of losing his employment on 2 October 2020 (when all other staff in the organisation also lost their jobs), the claimant became depressed and lost confidence. He found himself unable to concentrate. He undertook a little research and believed that he was redundant. The time limit for bringing a claim relating to redundancy is six months. He was not a member of a union and there were no recognised unions within the organisation. The claimant heard from an ex-colleague on 1 March 2021 that his claim for a protective award should have been presented within three months of 2 October 2020, because his claim was actually for a protective award rather than redundancy, which had already been paid by the Secretary of State.

4. The claimant sought early conciliation within 24 hours of learning that he needed to do so, on 2 March 2021. The early conciliation certificate was issued on 3 March 2021. The claim was accepted by the Tribunal on 8 March 2021

5. There is a time limit of three months for bringing a protective award, extended to account for early conciliation, and extendable if the Tribunal determines that it was not reasonably practicable for the claimant to bring the claim in time (s.189 (5) Trade Union and Labour Relations (Consolidation) Act 1992("TULCRA"), which is analagous to that for unfair dismissal in s.111 Employment Rights Act 1996.

6. It is to be given a liberal interpretation in favour of the employee (*Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53 (CA).

7. What is reasonably practicable is a question of fact and thus a matter for the Tribunal to decide. *Wall's Meat Co. Ltd v Khan* 1979 ICR 52 CA

8. The burden of proof rests with the claimant to satisfy the Tribunal on the balance of probabilities that presentation in time was not reasonably practicable and that the claim was provided within such further period as was reasonable

9. In the circumstances I am satisfied that it was not reasonably practicable for the claimant to bring his claim within three months, bearing in mind his personal circumstances at the time. He reacted promptly to the information that he received, albeit on an ad hoc basis, and brought his claim very swiftly thereafter. It was reasonable for him therefore to bring his claim on 8 March 2021.

10. The Tribunal thus has jurisdiction to hear this claim.

11. The claimant is one claimant amongst a multi case involving others. He applied, and I agreed for his claim to be joined to the claim of his ex-colleagues.

Employment Judge Warren

Date: 25 May 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
27 May 2021

FOR THE TRIBUNAL OFFICE

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