



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr C Richards

**Respondents:** British Ceramic Tiles Limited in administration (1)

Secretary of State for Business, Energy and Industrial Strategy (2)

**Heard at:** By CVP video link **On: 27 July 2022**

**Before:** Employment Judge Sutton QC  
Ms L Goodfellow  
Mr M Reuby

## Appearances

For the Claimant:	In person
For the First Respondent:	No attendance
For the Second Respondent:	No attendance

## JUDGMENT

The claim for a protective award is dismissed, the same having been presented outside the applicable limitation period under s.189(5) of the Trade Union and Labour Relations (Consolidation) Act 1992.

The Tribunal therefore lacks jurisdiction to entertain the same.

## REASONS

1. The Claimant was employed as a machine operator by the First Respondent until that company was placed in administration. He was one of around 350 members of staff who were made redundant at the First Respondent's factory at Heathfield, near Newton Abbot in Devon. Along with the remainder of the workforce, he was dismissed on 30 January 2019.
2. The Claimant understood that he, along with his fellow employees, would be included in a group claim against the company in administration for a protective award under s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992, arising out of the First Respondent's failure to observe the requirement for collective consultation. The Claimant further understood that the Human Resources department of the First Respondent had made the necessary arrangements for such claim to be progressed.
3. Proceedings were commenced against the company in administration, issued in the Bristol Employment Tribunal under a lead claim number 1400412/2019. Ultimately, and after a substantial delay, judgment for a protective award was given by Employment Judge Cadney, determined on the papers and without attendance by any party. Protective awards were made in favour of the former employees whose names appeared in the schedule to the judgment, which was sent to the parties on 23 August 2021.
4. The Claimant learnt of those proceedings from a former colleague soon after the judgment had been issued. He was able to obtain a copy of the same online and discovered that his name was not amongst those included in the schedule.
5. The Claimant took steps to establish whether his name could be added to the judgment and was notified by the Tribunal in Bristol that he needed to engage in an early conciliation process via ACAS with the aim of commencing proceedings in his own name.
6. The Claimant did not have the benefit of legal representation to assist him with completion of the Claim form and was not assisted by Citizens Advice or other free representation services. Neither did he have the opportunity to consult with a trade union to obtain advice on the process.
7. The Claimant was however able to formulate his claim himself, setting out the details of Employment Judge Cadney's judgment and detailing the relief sought. Unfortunately this form was emailed to the Tribunal rather than being submitted either on-line or by post, which were the prescribed methods.
8. The form was therefore returned to the Claimant for re-submission on 6 December 2021. By this point there had already been very substantial slippage in terms of the time period in which protective award claims must be brought, although the Tribunal

was willing to accept that the reasons for this were to some extent understandable given that the Claimant was engaging in an unfamiliar process without support.

9. But a further period of delay occurred in December, when all that was required was for the Claimant to resubmit a form he had already satisfactorily completed, via one of the approved methods. In the event he delayed several weeks before doing so. The Tribunal is willing to accept the Claimant's account of the chronology, even though it had not been supplied with all of the relevant documents.
10. The claim has been brought substantially outside the applicable primary limitation period, which expired at the end of April 2019. The claim form was recorded as having been received by the Tribunal on 15 March 2022, but the Tribunal is willing to accept in the Claimant's favour that there was an administrative delay in getting the Claim entered on the register between early January 2022 and this date for which the Claimant was not responsible.
11. Pursuant to s.189(5) of the Trade Union and Labour Relations (Consolidation) Act 1992, where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of three months in which claims for a protective award must be brought, the Tribunal may extend time for such further period as it considers reasonable.
12. Making a possibly generous assumption that it would not have been reasonably practicable for the Claimant to have submitted his claim prior to early December 2021, the Tribunal could not identify any reasonable explanation for the delay that occurred from then until to the end of that month, given the minimal steps that were required of him and when there was a responsibility to progress his claim in a timely way in view of the delays which had already occurred.
13. For these reasons, the Tribunal concluded there was insufficient basis to extend time and that it accordingly lacked jurisdiction to entertain the claim. The Claim therefore falls to be dismissed.

**Employment Judge Sutton QC**

27<sup>th</sup> July 2022

Sent to the parties on:

27/07/2022

For the Tribunal: