



EMPLOYMENT TRIBUNALS

Claimant: Mr R Diaz
Respondent: Harvard Technology Limited (In Administration)

AT A HEARING

Heard at: Leeds **On:** 24th February 2020
Before: Employment Judge Lancaster

Representation

Claimant: Did not attend but submitted written representations
Respondent: No appearance entered and did not attend

JUDGMENT

1. The claim was presented on 26th September 2019, which was outside the 3-month period from 10th December 2018. It was reasonably practicable to have submitted the claim in time by 9th March 2019, and in any event, it was not presented within a reasonable time after that date.
2. The claim for a protective award is dismissed.

REASONS

1. The claim was originally submitted on 5th February 2019, which would have been in time.
2. On the Claim Form it was wrongly stated that ACAS did not have power to conciliate. The reason that the Claimant on the claim form “didn’t include my certificate number” (as was later asserted on 26th September 2019) was in reality because he had not properly applied for one.
3. The claim was therefore rejected because the Claimant did not at that time have an ACAS Early Conciliation certificate. Notification of rejection was sent on 13th March 2019, by which time the 3 month time limit up to 9th March 2019 had expired.
4. It was not until 26th September 2019 that the Claimant commenced early conciliation and a certificate was issued on that same date.
5. The certificate number was provided to the Tribunal immediately on 26th September 2019 and on that date, the mistake in the original claim having now been rectified, it was accepted. So 26th September 2019 is, therefore, the date when the claim was in fact presented, more than 6 months out of time.

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6. The Claimant has stated in written representations on 16th November 2019 that he “didn’t notice that the Early Conciliation certificate that had has been sent to me to be able to continue with my claim. As soon as I realised I sent it immediately.”
7. Whilst I may have been sympathetic had the Claimant in fact reacted promptly to the Tribunal’s delayed notification of rejection, I cannot accept that it was not then reasonably practicable to have approached ACAS until 6 months later.
8. By delaying the presentation of a valid claim with an early Conciliation number until 26th September 2019 the Claimant did not act reasonably promptly.

EMPLOYMENT JUDGE LANCASTER

DATE 24th February 2020

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