



EMPLOYMENT TRIBUNALS

Claimant: Mr J Bennett

Respondent: London and Regent Construction Limited (In Liquidation)

Heard at: London South (Croydon) **On:** 5 October 2017

Before: Employment Judge John Crosfill

Representation

Claimant: In person

Respondent: No appearance or representation

JUDGMENT

1. The Claimant's claim for unpaid wages was presented to the employment tribunal after the time limit imposed by Section 23 of the Employment Rights Act 1996 and accordingly the Tribunal has no jurisdiction to hear the claim.

REASONS

1. The matter was listed for consideration of whether the claimant had adequate capacity to conduct the proceedings and if so to determine whether the claims presented by the Claimant were made within the statutory time limits.
2. Mr Junior Bennett had provided the tribunal with medical records which disclosed a long history of mental impairment with a probable diagnosis of PTSD. Having reviewed that evidence and discussed with Mr Bennett the purpose of the hearing I was satisfied that he had sufficient capacity to deal with the issue of whether the claims were in time.
3. Mr Bennett was engaged working on a building site between 12 and 20 December 2012. On that last day he had an accident at work whereby he received a significant electric shock. It appears that he still suffers from both mental and physical impairments as a consequence of that accident.
4. The last date that Mr Bennett worked for the Respondent was 20

December 2016 and in those circumstances the ordinary 3-month time limit for presenting a claim expired on 19 March 2013. The claim form was not presented until 8 June 2017. It was therefore presented more than 4 years after the ordinary time limit expired. It would follow that the claim was out of time unless Mr Bennett could show me that it was not reasonably practical to present the claim in time in which case I could consider whether the claim was presented in a reasonable time thereafter.

5. The medical evidence I had showed that Mr Bennet had a mental health impairment and that had existed to a greater or lesser extent throughout the period of delay. I have seen records that show that he was being treated for the effect of the electric shock in January 2013. Whilst that evidence was incomplete and patchy I am prepared to assume that in the immediate aftermath of the accident it was not practicable to present a complaint to the Tribunal. The question is therefore whether the complaint has been presented in a reasonable time thereafter.
6. I consider that the issue that I needed to resolve was whether Mr Bennet's level of incapacity made it unreasonably difficult to present his claim before he actually did so. I fully accept that on the medical evidence provided he has suffered from a significant impairment to his mental health. He has been treated with anti-depressants and received counselling and other forms of treatment. He has had access to advice agencies and has used them to assist with other problems.
7. In 2015 Mr Bennett, with the assistance of a Barrister, commenced proceedings in the County Court claiming both damages for personal injury and the wages he claims in these proceedings against the Respondent and another individual. It seems that those proceedings were procedurally defective and the Respondent (or its insurer) successfully applied to strike out the claim. The Judge marked her displeasure with the failings of Mr Bennett's barrister by making a wasted costs order including an order that Mr Bennett be repaid any fees. Mr Bennett, acting in person attempted to appeal that decision but without any success. In terms of his losses for any personal injury it appears that the only remedy left to Mr Bennett is a claim against his former barrister. The Tribunal is unable to comment on the merits of such a claim but would urge Mr Bennett to seek legal advice if he is able to do so.
8. It seems to the Tribunal that it is impossible for Mr Bennett to show that it was not reasonably practicable for him to commence proceedings in the employment tribunal when he was actually able to do so having sought help and advice in the County Court. The fact that he possibly selected an incompetent advisor does not alter that conclusion. Clearly he had a full understanding of his claim because he included that claim in the civil proceedings
9. I therefore conclude that it would have been reasonable to present an application to the Employment Tribunal no later than the date that the County Court proceedings actually commenced in 2015. That means that

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the claim is out of time and the tribunal cannot hear it. Whilst the Tribunal has enormous sympathy for Mr Bennett that is not a basis to extend time in this particular jurisdiction where time limits are strict and depend upon feasibility rather than whether it would be just and equitable to extend time.

Employment Judge John Crosfill

Date: 5 October 2017