



EMPLOYMENT TRIBUNALS

Claimants: Ms W Samagalska and Miss S Bi

Respondent: Rushcliffe Care Group

Heard at: Nottingham **On:** Tuesday 7 March 2017

Before: Employment Judge Britton (sitting alone)

Representatives

Claimant: Mr E Benson, Volunteer

Respondent: No Appearance

JUDGMENT

Pursuant to Rule 13(4) of the Employment Tribunals Rules of Procedure 2013 (“the Rules”), the claim is reinstated, the original decision to reject the same having been wrong. The claim is part of the claim of Ms W Samagalska as they are a “multi”.

REASONS

Background

1. On 20 October 2016 this Judge had shown to him by the clerks, in accordance with Rule 12 of the Rules, a claim (ET1) which had been submitted for Ms Wioleta Samagalska by Nottingham Law Centre (NLC) against Rushcliffe Care Group: number 2601867/2016. It is a claim for a protective award pursuant to Section 188 of TULCRA 1992. He was informed “has indicated two Claimants but has only provided EC certificate for the first Claimant, reject second Claimant?” When I duly looked at the claim form for Ms Samagalska the first thing that stood out was that the particulars of claim, although referring to Claimants in the plural, did not name anybody other than Ms Samagalska. And the second point was that at 3.1 which is there to deal with multiple cases it was stated that this was not such a claim where there were other Claimants bringing a claim arising out of the same subject matter. Thus no name was provided. So it is not surprising that for the sake of completeness this Judge rejected any claim that there might have been for any other Claimant than Ms Samagalska.

2. On 2 October 2016 the clerks duly sent out a notice which inter alia rejected any claim that there might be by a second claimant for want of an ACAS EC certificate. This letter actually referred to “second claimant Miss S Bi” although

there was no such reference in the ET1 shown to this Judge.

3. Otherwise that notice went on in the usual way to inform the Respondent of the date by which it should file a response and that there would be a hearing of Ms Samagalska's claim on the substantive issue on 16 February 2017.

4. Promptly Mr Benson of the NLC appealed the rejection of the claim of Miss S Bi by his letter to the Tribunal of 27 October 2016. He invoked in particular Regulation 3(1) of the Employment Tribunals (Early Conciliation Exemption and Rules of Procedure Regulations 2014 ("the Regs") and which states:

"A person ("A") may institute relevant proceedings without complying with the requirement for early conciliation where:-

(a) Another person ("B") has complied with that requirement in relation to the same dispute and A wishes to institute proceedings on the same claim form as B."

And he went on to spell out only in summary, I suspect because he didn't know what the Tribunal hadn't got, why it was wrong to have rejected Ms Bi's claim. Unfortunately that application was not placed before a Judge. I should point out that this being an application for reconsideration pursuant to Rule 13 of the Rules it was submitted within the 14 day time limit.

5. Having heard nothing, Mr Benson repeated his application on 2 December querying why it had not previously been actioned. He had now learnt more about the Ms Bi claim and that it appeared to have been given a separate claim number; and he was told that it had been rejected essentially for the reasons I have already given. This confused him for reasons I shall come to and in terms of what he had done in completing an online application form. This time the application got put before this Judge in due course hence the hearing today to determine whether to permit the claim of Ms Bi to proceed.

6. The following is crucial in this case. Mr Benson has not got the claim form for Ms Bi simply because he wasn't able to download it at the time that he submitted it because the system won't let him to do so; subsequently he has never received a copy from the Tribunal.

7. However when I had further enquiries the following became self evident. Following the online application by Mr Benson the computerised system sent out to the Tribunal in Nottingham, in order that the hard copy claims could be generated, details that made plain that in fact the online submission had been in relation to 2 Claimants and that "the relevant required information for all the additional Claimants is the same as stated to the main claim of Wioleta Samagalska..." Full details of the second Claimant Ms Bi were generated. What however then happened is that the system seems to have generated out 2 case numbers and so 2 separate claims and the two weren't linked up as only being the one "multi" claim for both Claimants: Hence why the matter got referred to this Judge in the way it originally did and my rejection.

8. Of course they should have never been separated. Furthermore if I had seen the claim for Ms Bi at the time it would have been obvious the two claims were the same; and hence the ACAS EC certificate for Ms Samagalska was sufficient

to comply with reg 3 (1) (a) of the Regs. It follows that I revoke the rejection

9. Thus the claim is for Miss Samagalska and Ms Bi. The file will be recorded as such. **Furthermore the Respondent will be sent a copy of this order when it is served the Claim** in order that it is aware that the claim is for both Claimants. Therefore it now means that the clerks will serve out this claim in the usual way upon the Respondent and list it for a short track hearing.

Employment Judge Britton

Date 11 May 2017

JUDGMENT SENT TO THE PARTIES ON
20 May 2017

.....S. Cresswell.....
FOR THE TRIBUNAL OFFICE