



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D L B Hughes

**Respondent:** Toyoda Gosei UK Limited

**HELD AT:** Leeds

**ON:** 21 July 2017

**BEFORE:** Employment Judge D N Jones

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr A Rees, solicitor

# JUDGMENT

The claims are struck out on the grounds the Tribunal does not have jurisdiction to entertain them as the claimant has not complied with section 18A of the Employment Tribunals Act 1996.

# REASONS

1. This claim was issued on 12 February 2017. At an earlier preliminary hearing the respondent had conceded that the ACAS early conciliation provisions had been complied with because a certificate had been produced. The Tribunal noted that the date of the issue of the certificate post-dated the issuance of the claim. The date on the certificate is 16 February 2017; early conciliation notification was made by the claimant to ACAS on 8 February 2017. At a resumed preliminary hearing the Tribunal raised this jurisdictional point with the parties. Mr Rees on behalf of the respondent indicated the respondent would wish to consider that and raise a jurisdictional point.

2. The circumstances in relation to the contact with ACAS are not disputed. The claimant contacted ACAS on 8 February 2017. By email of 8 February 2017 at 9:47 Ms Anne Rees, conciliator at ACAS, informed Mr Hughes that she would be in touch

to discuss exploring the possibility of resolution of the matter he had contacted ACAS about and she provided other details.

3. Ms Rees similarly contacted Ms Danielle Jenkins, employee of the respondent, on the same date. Ms Jenkins informed Ms Rees that the respondent did not wish to conciliate and settle the dispute, and Ms Rees duly contacted the claimant on 9 February 2017 and conveyed this information. Ms Rees told the claimant that she would issue an early conciliation certificate and the claimant expected that to be issued on 9 February 2017. In fact the certificate, as I indicated, was not issued until 16 February 2017. The claimant submitted a claim form but did not have an early conciliation certificate because one had not been issued and so could not include the early conciliation certificate number. He therefore ticked the box on the claim form which said he did not have such a number and, explaining why he did not, he ticked the box which said “my employer has already been in touch with ACAS”.

4. The following day, on 13 February 2017, the claimant submitted an application for interim relief. That application was out of time and subsequently dismissed.

5. Section 18A(1) of the Employment Tribunals Act 1996 provides:

“Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information in the prescribed manner about that matter.”

6. Section 18A(4) provides:

“If during the prescribed period the conciliation officer concludes that a settlement is not possible, or (b) the prescribed period expires without a settlement having been reached, the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.”

7. Section 18A(8) provides:

“A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4).”

8. Section 18A(7) provides for exceptions to that procedure, and those exceptions were enacted in the Employment Tribunals (Early Conciliation: Exemption and Rules of Procedure) Regulations 2000. Paragraph 3 of those regulations provides:

“A person (A) may institute relevant proceedings without complying with the requirement for early conciliation where –

....

(c) **A is able to show that the respondent has contacted ACAS in relation to a dispute, ACAS has not received information from A**

**under section 18A(1) of the Employment Tribunals Act in relation to that dispute, and the proceedings in the claim form relate to that dispute.”**

9. Paragraph 12 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides:

“The staff of the Tribunal Office shall refer the claim form to an Employment Tribunal if they consider that the claim or part of it may be –

...

(c) One which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that early conciliation exemption applies.”

10. Regulation 10 provides:

“The Tribunal shall reject a claim if –

(1)(c) It does not contain all of the information – an early conciliation number or confirmation that the claimant has instituted any relevant proceedings or confirmation that early conciliation exemption applies.”

11. The claim form was accepted by the Tribunal because the claimant had confirmed that one of the exemptions applied.

12. In this case the claimant had read the contents of the pro forma claim form literally. He had understood that a certificate was to be issued and believed it had been issued on that day, namely 9 February 2017. The pro forma claim form does not indicate that it is a requirement of the exemption that the employer had only been in touch with ACAS in circumstances in which the claimant had not himself contacted ACAS about the relevant matter. Rather it would appear from the wording on the claim form that provided the employer had been in touch with ACAS an exception to the requirement to provide an early conciliation number applied.

13. I am required to apply the provisions of section 18A of the Employment Tribunals Act 1996 and the Regulations and not an understandable interpretation of the wording on the claim form. The exemption provided for in the Regulations requires the employer to have initiated the contact about the relevant matter with ACAS and the prospective claimant had not contacted ACAS about it, and does not apply to a situation in which the employer is responding to early conciliation initiated by the prospective claimant. Because the exemption identified by the claimant on the claim form did not apply, and an early conciliation certificate had not been issued before the presentation of this claim, the Tribunal does not have jurisdiction to entertain it. It follows that I am obliged to strike out the claim.

Employment Judge D N Jones

Date: 1 August 2017