



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Martena

**v Tottenham Hotspur Football &
Athletic Limited**

Heard at: Watford

On: 19 January 2018

Before: Employment Judge McNeill QC

Appearances

For the Claimant: Ms N Ballard, Solicitor

For the Respondent: No attendance

APPLICATION FOR RECONSIDERATION

JUDGMENT

1. The claimant's application for reconsideration is allowed.
2. The claimant's claim will be treated as presented to the tribunal on 6 October 2017, the claimant having rectified a defect in the claim form on that date.
3. The claim form should now be sent to the respondent.
4. The claim will be listed for an open preliminary hearing to determine whether it was not reasonably practicable for the claimant to bring his claim within the three-month time limit applicable to unfair dismissal claims and, if it was not, whether his claim was brought within such further period as the tribunal considers reasonable. Such hearing is to be listed on the first available date after the respondent's response has been received, with a time estimate of two hours.

REASONS

1. The claimant claims he was dismissed by the respondent on 15 May 2017.
2. Before a claimant brings a claim to the tribunal, subject to limited exceptions which do not apply here, the claimant has to go through a conciliation process which involves ACAS. That process is initiated by the provision to ACAS of prescribed information which can be provided in writing or orally. The rules are precise as to what must be provided.
3. The claimant in this case says that he contacted ACAS and explained his position to them. He says that he told ACAS that he was intending to go to a tribunal and was told by ACAS that he had a very good case for unfair dismissal. The claimant did not provide the prescribed information and the conciliation process did not take place.
4. The claimant accepts that he did not present an Early Conciliation (EC) form and that he did not comply with rule 3 of the EC Rules.
5. In the event, there was no EC process, as there should have been, before the presentation of the claim form on 9 August 2017. The claimant was represented by solicitors at that time who knew or ought to have known that a claim would be rejected if the EC process had not been gone through. The claimant's solicitors did not (and could not) tick the box on the claim form to say that an EC Certificate was available. When asked whether the claimant had an ACAS EC Certificate number, they very properly ticked the box 'No'. The tribunal therefore rejected the claim as it had to do under the relevant provisions of the rules of procedure: the relevant rules here being 10(1)(c)(i), 12(1)(c) and 12(2).
6. The claimant's solicitor was informed of the rejection of the claim by a letter dated 19 August 2017 which she says she received on 30 August 2017. At that point she contacted ACAS. That was the claimant's solicitors' first contact with ACAS in relation to the claim. The early conciliation process (although early conciliation a bit of a misnomer in this case as the very essence of early conciliation is that precedes the presentation of a claim) was commenced. Solicitors received confirmation of EC notification and the commencement of the EC period on 30 August 2017, after the expiry of the primary three-month time limit.
7. On 31 August 2017, the claimant's solicitor wrote to the tribunal asking for reconsideration of the rejection of the claim and by letter dated 7 September 2017, the tribunal correctly rejected that application for reconsideration. There was no valid basis for reconsideration at that point.
8. By an email dated 6 October 2017, the claimant's solicitor contacted the tribunal again. She attached a letter dated 5 October requesting an oral reconsideration hearing. She provided a copy of an EC Certificate. The certificate indicated that the date of receipt by ACAS of EC notification was

30 August 2017 and the date of issue of the certificate was 27 September 2017. No amended claim form was sent with the email of 6 October 2017.

9. It was submitted before me that the failure to provide an amended claim form, confirming the ACAS Certificate number, was a mere formality. I did not accept it was a mere formality but was prepared to accept that the letter of 5 October, sent on 6 October together with the EC Certificate, should be treated as rectifying the defect in the original claim form.
10. In considering the application, I considered rules 10(1)(c), 12(1)(c), 12(2) and 13. I was troubled by the question of whether a claimant could rectify a defect, consisting of a failure to include an EC number, by inserting the number of a certificate which post-dated the presentation of a claim. The reference in the rules to an EC certificate number arguably refers to a certificate issued before the presentation of the claim form, otherwise the policy of the scheme which requires early conciliation before issuing a claim form, is significantly undermined.
11. I considered the wording of the rules, however, and noted that the rules refer simply to the form and what the form should contain. Should the form contain reference to an EC number? The answer is plainly 'yes'. Does the form now, following the letter of 5 October 2017, contain an early conciliation number? In substance it does, it having been made clear in that letter that the claimant intended to the EC number in her claim form.
12. In all the circumstances, I treat the relevant box in the claim form referring to the early conciliation number, as now ticked. The claimant's representative, Ms Ballard, must now submit a claim from with the relevant boxes ticked and with the relevant EC number included.
13. However, under rule 13(4), if I decide the original rejection was correct as I do, while the defect has been rectified, the claim should be treated as presented on the date that the defect was rectified; I have found the defect was rectified on 6 October 2017. The claim is therefore brought well outside the primary limitation period.
14. For that reason, I have determined that the question of whether the claimant's complaint was presented in time should be determined as a preliminary issue.

Employment Judge McNeill QC

Date: 21 / 2 / 2018

Sent to the parties on:

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For the Tribunal Office