



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss K Dyduch**

**v Larchwood Care Homes (North) Limited**

**Heard at: Bury St Edmunds**

**On: 31 January 2018**

**Before: Employment Judge Laidler**

## **Appearances**

**For the Claimant:** Did not attend

**For the Respondent:** Mr A Sugarman, Counsel

## **JUDGMENT**

- 1. The claim is rejected under rule 12 of the Employment Tribunal Regulations 2013 as under sub paragraph (1)(d) it is one which institutes relevant proceedings, was made on a claim form which contains confirmation that one of the early conciliation exemptions applies and an early conciliation exemption does not apply.**
- 2. Further, and/or in the alternative, in so far as there was any intent to bring an interim relied claim in the ET1, none has in fact been brought and the ET1 does not disclose any of the legislative grounds upon which one could be brought. The claim for interim relief is dismissed.**
- 3. The circumstances in which a tribunal may order the claimant to pay the respondent's costs have arisen within the meaning of rule 76 in that the claim for interim relief had no reasonable prospects of success and the claimant has acted unreasonably in the bringing of these proceedings.**
- 4. In considering the exercise of its discretion to award costs, the tribunal may have regard to the claimant's means within the meaning of rule 84. The claimant is given the opportunity to provide details of her means in writing, to the employment tribunal and the respondent by 14 February 2018 and these will be taken into consideration by the tribunal in the exercise of its discretion.**

## REASONS

1. The claimant presented a claim form to the tribunal on 12 January 2018. This stated that her employment was due to end on 19 January 2018. She ticked the box stating she was claiming she had been unfairly dismissed.
2. The only information provided was "This care home is always short-staffed. There is only 2, or max 3 people on 25 residents. Some resistance are sit in wet soaking pads for hours cause there is not enough staff". In asking what compensation she sought the claimant stated "£2,000 pay for 30 weeks of work".
3. No ACAS Early Certificate number was given. The claimant ticked the box that one had not been obtained, but that the reason why was "My claim consists only of a complaint of unfair dismissal which contains an application for interim relief".
4. It was believed the claim contained a complaint of having raised a protected disclosure and the interim relief application was processed on that basis. A letter was sent to the parties on 24 January 2018 giving notice of the application for interim relief and advising that the respondent would be provided with a copy of the application and any supporting documentation at least seven days before the hearing.
5. Despite that letter however the hearing was listed for 31 January 2018 in the Cambridge County Court. This did not give the respondent seven days' notice.
6. By letter of 25 January 2018 solicitors instructed by the respondent advised that they had received the ET1 form but no application for interim relief but had understood from the tribunal that the hearing was listed for 31 January 2018. They specifically stated they had not received a copy of the application for interim relief and supporting documentation. It appears, although it is not clear from the tribunal file, that a further copy of the ET1 was sent to them, there being no other documentation received from the claimant.
7. On 30 January 2018 (the day before this hearing) the parties were advised that due to lack of judicial resources the hearing could not be accommodated in Cambridge and was to be transferred to be heard at the Bury St Edmunds Employment Tribunal. The claimant advised verbally on the telephone that due to childcare she was unable to attend. She was told to put this in writing and email it to the tribunal but nothing was received from her.
8. The respondent attended this hearing by counsel. On 30 January, they had sent through their solicitors a letter to the claimant putting their client's case that the application for interim relief stood no reasonable prospects of success and that it was not supported by any formal application. The claimant was warned that in pursuing the application the respondent believed she was acting vexatiously or otherwise unreasonably and in the event, she decided to

continue an application would be made for costs. They also set out that interim relief was only available in limited circumstances and that “Based on the very limited information that is contained in your ET1 claim form, we have assumed that you are pursuing interim relief based on alleged whistle blowing. However, you have provided no detailed information about any protected disclosure allegedly made by you or its relevance to your dismissal”. They pointed out that the claimant had referred to the residents in her ET1 but that as she was aware she had been dismissed during her probationary period by reason of poor attendance.

9. The claimant did reply to that email and the contents of her reply in full is as follows:

“The comment about negligent residents been filed in wrong place, it was unfair dismissal there is a law for single parents. My girls were ill I couldn’t leave them at home on my own. I’ve told management were aware of it and I have sick notes from 21... till the day I’ve come back. This cost me a lot of stress. I’ve been underpaid last month as well.”

10. The claimant did not state that she was relying on any of the grounds which would entitle her to claim interim relief. She did not comment on the allegations that the claim had no reasonable prospects nor on the respondent’s costs warning.
11. The claimant did not attend this hearing. Counsel attended with a detailed skeleton argument that has been considered by the tribunal.

### **The tribunal conclusions.**

12. The tribunal is satisfied that the claim form in this matter should not have been accepted. There is no interim relief claim made in the ET1 form and none of the circumstances set out in s.128 of the Employment Rights Act 1996 are evident in it. In those circumstances the claimant should have gone through the ACAS Early Conciliation procedure but did not do so. Therefore, she was not able to submit an ACAS Early Certificate number in the ET1 form and it should have been rejected. The Judge accepted the submissions that there was jurisdiction to still reject the form as it had come before the tribunal at this stage and it is now rejected.
13. Further, and/or in the alternative, if there was an intent by the claimant to bring a complaint of interim relief, this tribunal has determined that none has been brought in this claim form. The claimant has not identified any matters that go to the unfairness of her dismissal or any matters that could go to a claim being brought under the automatically unfair dismissal claims set out in s.128. The interim relief claim is therefore dismissed.

**The respondent's costs application**

14. It was submitted that the claimant had been advised by solicitors acting on behalf of the respondent the day before this hearing that her application was misconceived and warning her of the power to award costs and identifying that the costs incurred were approximately £4,000. There was no withdrawal and no concessions made by her. The respondent is not seeking the totality of those costs but limits its application to £2,000.
15. The claim and the claim for interim relief had no prospects of success. It cannot be contentious in view of the way the claim has been set out in just one sentence. The respondent has been put to the expense of dealing with the claim which had no merit.
16. The claimant had behaved unreasonably in bringing the claim as she has caused the tribunal to list it by intimating that the ACAS Early Conciliation procedure did not apply and not making a proper application for interim relief. She has further failed to engage with the respondent's solicitors and turned up with no written explanation. She received notification of this hearing by letter of 24 January and had ample opportunity to advise the tribunal in writing if she was unable to attend the hearing. If she had childcare issues they could have been raised earlier. She was invited yesterday to put her concerns in writing but failed to do so.
17. Further, the respondent submitted this is not the first time that childcare has been raised by the claimant as it is one of the reasons given for absences which led to the ending of her probationary period.
18. The costs provisions must be engaged and the tribunal then has a discretion to award costs.
19. On behalf of the respondent it was accepted the claimant ought to have had the opportunity to make representations with regard to the application. However, it was argued that she was put on notice yesterday. She had the opportunity to send written representations or to attend and deal with the application. It was submitted she had ample opportunity to provide details of her means. She is not here to say that she has not the means to pay and the respondent would invite the tribunal to order that she pay £2,000 to reflect the costs incurred.

**The tribunal's conclusion on costs.**

20. For all the reasons given by the respondent the tribunal accepts the discretion to award costs has been engaged. The claimant has clearly acted unreasonably and the claims had no reasonable prospects of success with the limited information given. She has failed to attend this hearing and even when invited to put her reasons in writing for not being able to attend, refused to do so.
21. The Rules however do say that the tribunal may have regard to the paying party's means. As she did not attend she is given 14 days from the date of

this hearing to provide details of her means if she wishes the tribunal to take these into account in exercising its discretion.

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Employment Judge Laidler

Date: 22 / 2 / 2018

Sent to the parties on: .....

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For the Tribunal Office