Appeal No. UKEAT/0048/17/LA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 17 October 2017
Judgment handed down on 3 July 2018

Before

HIS HONOUR JUDGE MARTYN BARKLEM

(SITTING ALONE)

BIRMINGHAM CITY COUNCIL — APPELLANT

MS G ADAMS & OTHERS — RESPONDENTS

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR PAUL EPSTEIN (One of Her Majesty's Counsel) Instructed by: Birmingham City Council PO Box 15991 Birmingham B2 2UQ
For the Respondents	MR PAUL SMITH (of Counsel) Instructed by: Paul Doran Law Unit 14B, Building 10 Central Park Mallusk County Antrim BT36 4FS

SUMMARY

PRACTICE AND PROCEDURE - Application/claim

An Employment Tribunal did not err in law in holding that forms ET1 in which the details of claim were not set out in the form, but by reference to an attachment to a form ET1 issued by (an)other Claimant(s) bringing similar claims complied with Rule 1(4)(e) **2004 ET Rules**.

HIS HONOUR JUDGE MARTYN BARKLEM

1. In this Judgment I will refer to the parties as they were below.

2. This is an appeal against an Order of the Employment Tribunal sitting at Birmingham (Employment Judge Findlay) which dismissed (so far as is relevant) the Respondent's application to dismiss the claims of a number of Applicants. I shall refer to the Written Reasons which accompanied the Judgment as "the Reasons".

3. The background facts and the ground of appeal have been set out with admirable brevity and succinctness in the Notice of Appeal in the following terms:

> **"Background**
>
> **6. These equal pay claims have a long and complex history, although for present purposes it is unnecessary to recite the details.**
>
> **7. The claims were all presented singly, on different claim forms, under the 2004 employment tribunal ("ET") rules.**
>
> **8. R.1(4)(e) of the 2004 rules, which is jurisdictional, permitted a claim to be brought "by presenting to an ET office" the "required information", which "must include" the "details of the claim".**
>
> **9. Kalaisho Devi complied with this requirement. The other 10 claimants ticked the ET1 box marked "Sex (including equal pay)" and nine said only "I rely on the particulars of claim attached to the ET1 of Kalaisho Devi submitted on 19 January 2011" and, in the case of Gwendoline Adams, said only that she relied on a pleading in proceedings known as Ardron. Those other pleadings were not served with those 10 claim forms.**
>
> **10. The City Council applied under r.53(1)(b) of the 2013 rules to dismiss the claims (save for that of Kalaisho Devi) for lack of jurisdiction.**
>
> **Grounds of Appeal**
>
> **11. The ground of appeal is as follows:**
>
> > **Misinterpreted r.1(4)(e) 2004 ET rules**
> >
> > **The learned employment judge misinterpreted r.1(4)(e) of the 2004 ET rules in concluding that the 10 claims (save for that of Kalaisho Devi) included the details of the claims, particularly in circumstances where (A)(i) the 10 claim forms contained no details of the claims at all, (ii) instead purported to incorporate other pleadings, and (iii) were not served with those other pleadings, and where (B) this tribunal concluded in Badra [v] Gardiner & Theobald LLP UKEAT/0191/10/SM that ticking the box marked "Sex (including equal pay)" was insufficient to amount to presenting "details of the claim"."**

4. The appeal was permitted to proceed to a Full Hearing at the sift stage by Laing J who said, in her reasons:

> **"In my Judgment, this point is arguable. The language of Rule 1 is ambiguous on this issue. Indeed, the use of the word 'present' could be said to favour the [Respondent's] construction somewhat more than the construction which the Employment Tribunal adopted (and see paragraph 55 of the Decision)."**

5. At the hearing of the appeal a number of authorities were cited to me, including that of **Trustees of the William Jones's Schools Foundation v Parry** [2016] ICR 1140 EAT, a decision of Laing J, albeit dealing with an issue arising from the **2013 Rules** and not the **2004 Rules** with which this appeal is concerned.

6. On 28 March 2018 the Court of Appeal allowed an appeal against the decision of the EAT in **Parry** (see [2018] EWCA Civ 672). Out of an abundance of caution I invited the parties to make any further written submissions in the light of the Court of Appeal's ruling, following which I have had helpful written submissions from counsel for both parties for which I am grateful. As it happens, the Employment Judge had issued a similar invitation following his becoming aware of the EAT's decision in **Parry**.

7. Although this appeal concerns the **2004 Rules**, superseded as long ago as 2013, I am told by Mr Smith for the Claimants that the issue remains potentially live in a number of similar cases, principally involving multiple equal pay claims.

8. So far as relevant, Rule 1 of the **2004 Rules** provides as follows. As in the Respondent's skeleton argument, emphasis has been added by italicising the wording which is key to this appeal:

> **"(1)** ***A claim shall be brought before an employment tribunal by the claimant presenting to an Employment Tribunal Office the details of the claim in writing. Those details must include***

> ***all the relevant required information*** **(subject to paragraph (5) of this rule and to rule 53 (Employment Agencies Act 1973)).**
>
> **…**
>
> **(4) Subject to paragraph (5) and to rule 53, *the required information in relation to the claim is* -**
>
> **(a) each claimant's name;**
>
> **(b) each claimant's address;**
>
> **(c) the name of each person against whom the claim is made ("the respondent");**
>
> **(d) each respondent's address;**
>
> **(e) *details of the claim*;**
>
> **(f) whether or not the claimant is or was an employee of the respondent;**
>
> **(g) whether or not the claim includes a complaint that the respondent has dismissed the claimant or has contemplated doing so;**
>
> **(h) whether or not the claimant has raised the subject matter of the claim with the respondent in writing at least 28 days prior to presenting the claim to an Employment Tribunal Office;**
>
> **(i) if the claimant has not done as described in (h), why he has not done so.**
>
> **…**
>
> **(7) Two or more claimants may present their claims in the same document if their claims arise out of the same set of facts."**

9. The meaning of the expression "details of the claim", at Rule 1(4)(e) is of key importance to this appeal.

10. The Employment Judge made reference to a number of cases which had been cited in argument, and I set out below the ET's analysis of those cases, many of which have been cited in argument to me today, this appeal being, essentially, a re-run of the arguments advanced below:

> **"40. I was referred by the parties to a number of authorities, some of which related to different versions of the Rules of Procedure.**
>
> **41. The earliest case to which I was referred was the case of <u>Burns International v Butt</u> which relates to the 1980 rules, which were in slightly different form from the 2004 rules and which required "the grounds, with particulars thereof, on which relief is sought". In that case, it was held that rule 1(1) of the 1980 rules was directory not imperative, and that the purpose of the rule was to ensure that respondents understood the nature of the case made against them. Reference was made to the power to request further particulars.**
>
> **42. Mr Butt had (unfortunately) been given an old form of the Claim Form, and had just stated that he was claiming unfair dismissal and that the reason for his dismissal was "not**

known". It was held that a technical approach should not be encouraged, and at paragraph 9 the Appeal Tribunal (chaired by Mr Justice Neill) stated: "*It seems to us that in the field of industrial relations where application forms are frequently completed by individual employees without professional assistance, a technical approach is particularly inappropriate*". It went on "*it is to be remembered that an industrial tribunal has power under rule 4 of the 1980 rules to require any party to furnish further particulars of the grounds on which he relies and of any facts and contentions relevant thereto*".

43. At paragraph 10 it continued "*it was pointed out in Cocking's case that the rules did not require that the complaint as presented should be free of all defects or should be in the form in which it finally came before the tribunal for adjudication. The purpose of the rules is to ensure that the parties know the nature of the respective cases which are made against them. The present rules give considerable powers to the industrial tribunal to control the conduct of the proceedings both before and at the hearing*".

44. The next case I was taken to was Ali v The Office of National Statistics which is a Court of Appeal case dating from 2004. The question in that case was whether the tribunal had been correct to say that simply by raising a claim in very broad terms to the effect that black people had been "excluded from employment", the claimant was making a claim of indirect sex discrimination.

45. Lord Justice Waller stated at paragraph 39: "*In my view the question whether an originating application contains a claim has to be judged by reference to the whole document. That means that although box 1 may contain a very general description of the complaint and a bare reference in the particulars to an event (as in Dodd) particularisation may make it clear that a particular claim, for example for indirect discrimination is not being pursued. That may at first sight seem to favour the less particularised claim … but such a general claim cries out for particulars and those are particulars to which the employer is entitled so that he knows the claim he has to meet. An originating application which appears to contain full particulars would be deceptive if an employer cannot rely on what it states. I would for my part think that insofar as the case of Quarcoopome suggests to the contrary, it should not be followed*". I observe that this appears to relate to a different kind of problem from that expressed in the respondent's first application - i.e. whether it is sufficient to cross refer to another claim for "details" as opposed to what types of claim the instant claim form contains - and may be more relevant to the second issue I have to determine than the first.

46. I was also taken to Baker v The Commissioner of the Metropolis, a decision of the Employment Appeal Tribunal in 2010. In that case, the claimant had ticked boxes on the Claim Form indicating that he was claiming both disability and race discrimination. In box 6.1 of the Claim form, however, he referred to allegations of race discrimination, but there was no obvious complaint of disability discrimination. This was a case turning on the 2004 rules, and the Appeal Tribunal referred to the case of Ali (above).

47. At paragraph 54 Mrs Justice Slade states: "*In our judgment the Employment Tribunal correctly considered the first Claim Form (ET1) as a whole. It came to a conclusion which was open to it. Whilst the particulars given in the ET1 raised a recognisable case of race discrimination, the claimant did not say that the discrimination alleged had anything to do with his learning difficulties or dyslexia (the alleged disability). Neither did the claimant say that any or any specific adjustments should have been made for him by reason of his disability. Accordingly, whilst recognising that a technical approach to the question of whether a particular claim raised in an ET1 is inappropriate, on the facts of this case the ET did not err in law or come to a perverse conclusion in holding that, read as a whole the first ET1 did not include a claim of disability discrimination*".

48. She goes on - "*in the light of the difficulties which arise from time to time from insufficient particularised ET1s in discrimination cases, particularly where these have been completed without expert assistance, we suggest that it may be helpful to review the wording of the forms. As Ali illustrates, a claim of indirect discrimination is different from one of direct discrimination. Victimisation claims are also different as is a claim under the DDA relating to a failure to make reasonable adjustments*". Once more, this does not grapple directly with the point in issue in the first application made by the respondent here, but is perhaps more apt in relation to the second application.

49. I was also referred to the line of cases regarding the Statutory Grievance Procedure including Arnold v Sandwell Borough Council and Suffolk Mental Health Partnership & Others. As I have said, those cases related to the Statutory Grievance Procedure and found that the information given in the context of the grievance can be minimal and

needed to state no more than that the claim is a claim under the Equal Pay Act. Once more this does not particularly assist me with the first argument raised, and in any case Mr Epstein referred me to the case of Badra in which His Honour Judge Serota QC held at paragraph 24 - "*A Claim Form should not be less informative than a grievance but rather should be more informative*".

50. He went on - "*the ET1 is a more formal document than a grievance. It initiates litigation. Again, the employer must plead to it and although he can seek particulars he is entitled to know the basis of the claim he has to meet. Also, unlike a grievance, the provision of the ET rules which I have referred to above include a requirement that details of a claim must be included. Where a Claim Form does not provide the required information the Secretary of the Tribunal is bound to refuse to accept it. I am of the opinion therefore that however minimalist the requirement of detail in an ET1 Claim Form, the minimum requirements are that it should identify with sufficient clarity the nature of the claim, so that a reasonable employer can discern what cause of action is being alleged*".

52. [sic] Once again, however, this does not deal directly with the situation where the claimant refers to another set of pleadings in a different case which have been, on everyone's case, properly particularised. He also referred to the case of Grimmer v KLM where the claimant had provided minimal details, stating in box 1 that she was claiming "flexible working" and in box 11 she stated "*the company's argument refusing my application is based upon my assumption that if they concede to my request others would be requesting similar/same working arrangement*". In the EAT, observing that flexible working was an employment right provided for in primary legislation hence she had provided sufficient details for her claim, Judge Prophet stated at paragraph 15: "*The test for details of the claim emerges as being whether it can be discerned from the claim as presented that the claimant is complaining of an alleged breach of an employment right which falls within the jurisdiction of the Employment Tribunal. It follows if the test is met there is no scope for either the secretary or a chairman interpreting details of a claim as being sufficient particulars of the claim. If it becomes necessary, as a case proceeds through the system, for further information or further particulars to be obtained, for example to clarify the issues, that can be done, either on the application of a party or by a chairman on his/her own initiative under rule 10 (case management)*" …

53. Judge Serota noted that the details of the claim given by Mrs Grimmer were greater than those given by the claimant in the case he was considering. In that case, under the 2004 rules, the claimant had simply ticked a box including the words 'sex (including equal pay)'. There were two paragraphs which the claimant was arguing raised a claim of equal pay. Judge [Serota] found that there was nothing in that claim apart from allegations of discrimination on the grounds of sex, not of equal pay, and he followed the reasoning in Ali. Again, however, he was dealing with a different issue from that which arises on the first application here."

11. The Employment Judge set out his conclusions as to the application of the law to the facts at paragraphs 58 to 71:

"58. I shall begin first by considering whether, in relation to the 7 claims which were presented *on 19 January 2011*, (other than that of Kalaisho Devi), the claimants presented to the tribunal office "*the details of their claims in writing*" under rule 1(1) and (4) of the 2004 rules, including all of the relevant required information, in this case specifically the "*details of the claim*" under rule 1(4)(e). If they did not, the parties agree that there was no jurisdiction to consider the claims so that they should (save that of Mrs Devi) be dismissed.

59. Each of those claims ticked the box for sex discrimination including equal pay and at 5.2 referred the reader to the particulars of claim attached to the ET1 of Kalaisho Devi submitted on 19 January 2011. Obviously, they could not refer to a case number at that point because none had been issued. Mr Epstein has referred to the possible repercussions should it be sufficient to refer to details of a claim presented on a different day in a different region against a different respondent or any of these. I am not, however, dealing with any of those scenarios.

60. I remind myself of the test expressed cogently by His Honour Judge Serota QC in Badra, paragraph 24, that a reasonable employer should be able to discern, [from the details provided on that claim form looked at as a whole], that cause [or causes] of action is/are being alleged. I am dealing, first of all, with a factual scenario where eight claims were presented on one day to the same tribunal against the same respondents with one of them attaching lengthy particulars of claim and the others cross referring to it as amounting to the details of their claim.

61. I consider that, looked at objectively, this amounts to presenting or delivering to the Employment Tribunal office the details of their claim in writing on the prescribed Claim Form. The "details" are said to be those set out in the particulars of claim attached to a readily identifiable ET1. The respondent was a respondent to all of these claims and would have received copy ET1s and notices of issue in relation to all of them at or about the same time. It seems to me that a reasonable employer would have no trouble in identifying Mrs Devi's claim in those circumstances and hence in discerning what causes of action were being alleged in her claim and so in all of those, issued on the same day, which cross referred to it.

62. I do not consider, as Mr Epstein argued, that this is to imply a subjective test - it is not a question of whether the respondent (or, indeed, the tribunal) actually *did* subjectively realise or know immediately which was the other claim that was being referred to, it is a question of whether they *reasonably ought to have* looking at the surrounding facts and circumstances. I consider that the reference was clear and that the respondent reasonably ought to have been able to discern what claims were being made due to the cross reference to Mrs Devi's claim, which is agreed to have been adequately particularised. To hold otherwise would be to ignore the pertinent words used about the context in which the rules are applied set out in the Burns International case.

63. In addition, dealing with Mr Epstein's arguments about practicality, the tribunal could easily identify the Claim Form because it was presented on the same day and by the same solicitors as all the others.

64. If the respondent's arguments are correct, it would mean that in a case such as this, where the claimants have chosen to use separate Claim Forms for each claim for claims arising out of the same factual scenario (and they did have a choice about this as the words of rule 1(7) of the 2004 rules are not mandatory) they would otherwise have to attach the same 66 paragraphs as Mrs Devi used, when in fact all the claims arise out of the same set of circumstances. I cannot see why this would be a sensible or efficient use of anyone's resources - the employer would have to scan each claim form to ensure they were identical as opposed to just looking at one set of information in respect of all 8 claims.

65. To conclude I consider that certainly the claimants who presented their claims on the same day as Mrs Devi were presenting the "details" of their claim on the Claim Form to the tribunal by delivering claims which cross referred to Mrs Devi's claim, which the respondent accepts is properly particularised. They were, in effect saying - "details of my claim are the same as those set out in the attachment to Mrs Devi's claim". As I have said, I consider, as indicated in the various authorities set out above, that a non-technical and liberal approach should be taken in this context - that is the context of an Employment Tribunal where many claimants are not represented.

66. Next, looking at the claim of Mrs Adams against this respondent, presented on 22 February 2011; on page 70, Mrs Adams has ticked boxes for 'sex (including equal pay) and other payments' and states at box 5.2 - "*The claimant relies upon the particulars of claim submitted by the claimant Deborah Ann Adams and 1887 others on 21 July 2010, (Case number 1309193/2010 and others) and the Consolidated Particulars of Claim submitted in the case of Ardron and others*" - giving the case number and multiple number. Paragraph 2, as I have noted states that the pleadings run to 64 pages in total therefore have not been attached to the claim but can be provided on request.

67. The claimant was presenting the details of her claim to the Employment Tribunal office on the appropriate Claim Form and in writing. Once more, the respondent was the same in the cases that she quoted and in this case she was able to give a case number (and, in the case of Ardron, a multiple number). Looked at objectively, it ought to have been clear to a reasonable respondent which particulars she was relying upon and that the claimant was making the same claims as were made in those cases. It has not been suggested that either the Deborah Ann Adams case or the Ardron case were inadequately particularised.

68. Again I do not think this is a subjective test. It may be that someone receiving this in the respondent's offices had no idea what the case of Deborah Ann Adams was about (or indeed a member of administrative staff of the tribunal may have been in the same position) but given the details of case numbers (and in the case of the Deborah Ann Adams' case the date of presentation, in the case of Ardron the multiple number), it should have been clear to a reasonable employer what particulars were being referred to and it should have been possible to identify them without delay. So I consider that Mrs G Adams had done sufficient to present the details of her claim to the tribunal in writing.

69. Again, in the case of Ms Holt, who presented her claim on 14 March 2011, although she was claiming six weeks or so later than Mrs Devi, there was a reference to the particulars of claim in the case of Kalaisho Devi and the date of presentation. Again, I consider that a reasonable employer should have been able to discern which claim she was referring to, and hence what claims she was making. I consider this to be sufficient presentation of the details of her claim in writing. In this case, however, Ms Holt claimed only against the School, and therefore it will be necessary to consider the amendment to her claim (below) before her claim can proceed, as the Governing Body of the School is no longer a respondent.

70. In the case of Wendy Hopkins, she again claimed against this respondent as well as the School, on 19 December 2011, and she referred to the particulars of claim attached to the ET1 of Kalaisho Devi and gave the date of submission. For the reasons given above, looked at objectively, again I consider that a reasonable employer should have been able to discern which claim she was referring to and hence which claims she was making, and so I find that this was sufficient presentation of the details to comply with the 2004 rules, taking account of the above case law.

71. So the respondent's first application fails."

12. On behalf of the Respondent Mr Epstein QC's case is, in essence, that the EAT had, in the decisions prior to **Parry** (and in particular **Burns**, **Dodd**, **Grimmer**, and **Hamling v Coxlease School Ltd** [2007] IRLR 8 (not cited below)), erred in failing to appreciate the jurisdictional nature of the Rules, and the mandatory language used. He says that this was only recognised in **Parry**. Before citing the relevant passage, I should say that **Parry** was concerned with a claim filed under the **2013 Rules**. Rule 12(1) provides that the staff of the Tribunal must refer a claim form to an Employment Judge if they consider (among other things) that the claim or part of it may be (1) one which the Tribunal has no jurisdiction to consider, or (2) in a form *which cannot sensibly be responded to* or is otherwise an abuse of the process [emphasis added].

13. In **Parry** the Claimant had presented a claim form on 25 January 2016, a day before limitation expired. She claimed unfair dismissal and arrears of wages. With one exception, the relevant boxes in the form ET1 were filled in. In section 5, the box for the date when the

employment ended is not filled in, but the box "Is your employment continuing" was ticked. Section 6 (about earnings and benefits) is blank. Section 8 is headed "Type and details of claim". The box "I was unfairly dismissed" is ticked, as are the boxes "I am owed" and "arrears of pay". Box 8.2 states: "Please set out the background and details of your claim in the space below. The details of your claim should include the date(s) when the event(s) you are complaining about happened. Please use the blank sheet at the end of the form if needed". Inserted into that box were the words "Please see attached". Unfortunately the document which her solicitors attached related to an entirely different case.

14. The Employment Judge had held (inferentially) that the form could sensibly have been responded to (the appropriate test) but Laing J said, in the last sentence of paragraph 31 of her judgment that:

> **"31. … I have no hesitation in holding that no reasonable employment judge properly directing himself in law could have concluded that an ET1 in this form could sensibly be responded to."**

15. At paragraph 32 of **Parry**, Laing J continued:

> **"32. Before I leave this aspect of the argument, I must deal with various submissions made by Ms Newbegin, based on earlier authorities (for example Burns International Security Services (UK) Ltd v Butt [1983] ICR 547) and on earlier iterations of the procedure rules, about the basic minimum which an ET1 should contain, and the consequences of a failure to comply with any minimum requirements. The extent to which those authorities can help me is much limited by two factors. First, they concern the construction of different words in different procedure rules. Second, and more importantly, they are based on the misapprehension that a failure to comply with a prescriptive procedure rule made in delegated legislation cannot take away a right to make a claim which is conferred by primary legislation. At any rate since the Employment Protection (Consolidation) Act 1978 the primary legislation has provided that claims must be "made", or "instituted" in accordance with procedure regulations. These provisions provide statutory authority for rules which derogate from the statutory right to bring a claim if that claim is not "made" or "instituted", as the case may be, in accordance with procedure rules. The cases on which she relied do not refer to section 128 of the 1978 Act or to section 7(2) of the Employment Tribunals Act 1996, as the case may be. I accept Mr Leach's submission that section 7(2) is highly significant."**

16. Mr Epstein's case relies heavily on the sentence in paragraph 32 namely "*Second, and more importantly, they are based on the misapprehension that a failure to comply with a*

prescriptive procedure rule made in delegated legislation cannot take away a right to make a claim which is conferred by primary legislation".

17. In his recent addendum skeleton, which I asked for after **Parry** was decided in the Court of Appeal, Mr Epstein argues that, at the point of the EAT decision in **Parry**, the position was that the requirements as to the content of the claim form were mandatory and that earlier cases based on **Burns** proceeded on a misapprehension and were wrongly decided. There are two further points which he advances which I consider unnecessary to quote.

18. In my judgment, the finding by Laing J that the cases following **Burns** were based on a misapprehension was not a finding that the misapprehension was as to the jurisdictional nature of the requirements, but, rather, as to their *vires*.

19. Dealing with the substantive finding by the EAT the Bean LJ said this, at paragraph 30:

> "***Was the ET1 in this case in a form which could sensibly be responded to?***
>
> **30. The judge, as already noted, held that an EJ looking at this ET1 could only have concluded that the Respondent school "would have had no idea of the basis on which the Claimant was making either of her claims". With respect, I entirely disagree. The school knew perfectly well that, as the ET1 states, she had been employed by them as Director of Dance from 1 September 1996 onwards. They also knew, although the ET1 did not state this, that her employment in that capacity had been terminated on 31 August 2015 and that she had been re-engaged as Head of Dance the next day. Their case was that the dismissal was a genuine redundancy. Her case was that it was not. (No separate argument was advanced before us relating to the claim for arrears of wages.)**
>
> **31. The school could and in my view should have filed an ET3 stating something on these lines: "The Claimant was dismissed on 31 August 2015 on the grounds of redundancy, which in the circumstances the Respondent acted reasonably in treating as a sufficient reason for dismissal". Either side could then have been directed to give further details of their case. But at least proceedings would have been properly launched. Employment tribunals should do their best not to place artificial barriers in the way of genuine claims."**

20. The Court of Appeal reversed Laing J's decision that the relevant Rules were *ultra vires* the primary legislation. I am, of course, aware that Rule 12 of the **2013 Rules** involves a wholly different test from the one with which this appeal is concerned. Nonetheless, the

A sentiment contained in the last sentence of paragraph 31 resonates, and I agree with Mr Smith in his recent submission that **Parry** in the EAT is not persuasive authority for the proposition advanced by Mr Epstein that **Burns** and the subsequent cases were wrongly decided.

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21. The thread running through the cases is that a literal and restrictive interpretation of the Rules is not to be encouraged. At paragraph 65 of the Reasons the Employment Judge described the effect of the authorities as being that "*a non-technical and liberal approach should be taken in this context*". I find that to be an accurate statement of the law. I find that there is no error of law in the approach taken by the Employment Judge in respect both of the seven claims presented on 19 January 2011 (as summarised at paragraphs 60 and 65 of the Reasons) and of the remaining claims (as summarised at paragraphs 66 to 70).

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22. Consequently this appeal fails.

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