



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Karam Rai  
**Respondent:** Leicester (T) Hairdressing Limited T/A Toni & Guy  
**Heard at:** Leicester  
**On:** 4 September 2018  
**Before:** Employment Judge Ahmed (Sitting alone)

## Representation

**Claimant:** Miss Rebecca Davies of Counsel  
**Respondent:** Mr Kashif Ali of Counsel

## JUDGMENT

The judgment of the tribunal is that:

1. These proceedings are struck out for failure to comply with the ACAS early conciliation requirements.
2. The hearing on 8 October 2018 is hereby vacated.

## REASONS

1. This was a Preliminary Hearing listed to determine whether this claim was presented out of time and to consider an application to amend the Claim. As it was the hearing concerned a slightly different though related jurisdictional issue.

2. In the ET3 Grounds of Resistance the Respondent raised a jurisdictional issue as to the claim being either time barred and/or not having properly submitted in relation to ACAS early conciliation requirements.

3. Mrs Rai was employed by the Respondent as a Manager/Technical Director from 1 October 2002 to 7 December 2017. In her claim form, presented on 1 May 2018 when she was legally represented (though not by those representing her now), she brought a complaint of unfair dismissal. A complaint of unfair dismissal is one to which the ACAS early conciliation provisions apply.

4. The Claimant contacted ACAS for early conciliation on 14 December 2017. It was unsuccessful and ACAS issued an early conciliation certificate under reference R219281/17/39. That was the first of two early conciliation certificates that were applied for by the Claimant against this Respondent. I shall refer to that as 'ECC1'.

5. The Claimant did not then issue proceedings within the time limit extension granted by ECC1. Instead, she waited and contacted ACAS again on 2 March 2018 and obtained a second early conciliation certificate which was issued on 2 April 2018. That bears the reference R124631/18/32. I shall refer to that as 'ECC2'.

6. The Claimant then presented her ET1 claim form on 1 May 2018. In her ET1 the early conciliation certificate number cited early conciliation certificate number R124631/18/32, that is to say ECC2.

7. The relevant early conciliation provisions are contained in Rules 10 and 12 of the Employment Tribunal Rules of Procedure 2013 (the '2013 Rules').

8. Rule 10 of the 2013 Rules, so far as is material, states:

"The Tribunal shall reject a claim if—

- (a) it is not made on a prescribed form;
- (b) it does not contain all of the following information—
  - (i) each claimant's name;
  - (ii) each claimant's address;
  - (iii) each respondent's name;
  - (iv) each respondent's address or
- (c) it does not contain one of the following—
  - (i) an early conciliation number;
  - (ii) confirmation that the claim does not institute any relevant proceedings; or (iii) confirmation that one of the early conciliation exemptions applies.

9. Rule 12 states:

"The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—

- (a) one which the Tribunal has no jurisdiction to consider;
- (b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process.

(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 one of the early conciliation exemptions applies;

(d) one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;

(e) one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates; or

(f) one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate to which the early conciliation number relates.

(2) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a) (b), (c) or (d) of paragraph (1).

(2A) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim.

(3) If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the Judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.

10. Rule 5 of the 2013 Rules is headed "Extending or shortening time" and states:

"The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired."

11. In **HM Revenue and Customs v Serra Garau** (2017) UKEAT/0348/16 it was held that once a Claimant has complied with the early conciliation requirements, Day A and Day B are fixed and the position cannot be changed by any later application for an early conciliation certificate by the Claimant in respect of the same matter. Any further conciliation is voluntary. The decision in **Serra Garau** was later confirmed by a different division of the EAT in **Treska v The Master and Fellows of University College Oxford** (2017) UKEAT/0298/16.

12. In **Sterling -v- United Learning Trust** (2015) UKEAT/0439/14, the EAT made it clear that the early conciliation number quoted on the ET1 form must be a valid number. In **Sterling** the claim form did not contain the full ACAS number but only part of it. By the time the error was identified and the claim form re-submitted it was out of time. Although the out of time point is not relevant for present purposes, **Sterling** makes it clear that where the certificate number is wrong, the Tribunal is obliged under Rule 10 (1)(c)(i) of the 2013 Rules to reject the form.

13. In my view the Tribunal should have rejected the Claim in this case because it contained the wrong early conciliation number. The Tribunal has no

jurisdiction to accept it. The fact that the administration wrote to the Claimant to say the Claim was accepted makes no difference. It was an administrative rather than a judicial act. The tribunal cannot give itself jurisdiction it does not have. Rule 10 is in mandatory terms. The fatal error for the Claimant was of course to cite the wrong early conciliation certificate number. Had the Claimant cited ECC1 instead of ECC2 she would at least have got through the early conciliation gateway and the issue would then have been whether an extension of time was appropriate. Unfortunately, we do not get that far because the Tribunal had no jurisdiction to accept the claim in the first place by virtue of Rule 10 (1)(c)(i) and possibly Rule 12(1)(c). For the purposes of Rule 12(1)(c) it must be implicit that the 'early conciliation number' is the *correct* early conciliation number. An error under Rule 12(1)(c) cannot be corrected as a 'minor error' under Rule 12(2A) because only errors under Rule 12(1)(e) and (f) can be corrected as minor errors. There is no saving provision for errors under Rule 12(1)(a) - (d) or under Rule 10. The form must go back to the Claimant under Rule 10(2) or Rule 12(3).

14. Miss Davies argues that the Tribunal has an inherent discretion to extend time under Rule 5. I do not agree that Rule 5 is engaged. Rules 10 and 12 are in mandatory terms. The requirements cannot be sidestepped by the use of a general discretionary rule as to extension of time. The problem in any event is not one of time limits but of an inability to get past the initial gateway.

15. For those reasons, I am satisfied that the Tribunal does not have jurisdiction to accept the claim under either Rule 10 or 12 of the 2013 Rules and accordingly this claim must be struck out.

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Employment Judge Ahmed

Date: 28 September 2018

SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS