

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4107581/2017

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Heard in Glasgow on 1 May 2018

Employment Judge: Lucy Wiseman

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Mr Terence Ballantyne

**Claimant
In Person**

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Network Rail Infrastructure Ltd

**Respondent
Represented by:
Ms C McKee -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The Tribunal decided to dismiss the claim.

REASONS

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2. The claimant presented a claim to the Employment Tribunal on 8 December 2017 alleging he had been unfairly dismissed. The date of dismissal was 28 March 2014.

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3. The respondent entered a response raising preliminary issues concerning the lack of an early conciliation certificate and timebar.

4. The claimant's claim was accepted (letter of 22 December 2017) and he was advised the claim appeared to have been made out of time.

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5. The file was referred for Initial Consideration and an Employment Judge noted the claimant did not have an early conciliation certificate from ACAS and did not appear to be exempt from obtaining one. The Judge directed the claim be dismissed in terms of Rule 27 Employment Tribunals (Constitution and Rules

E.T. Z4 (WR)

of Procedure) Regulations 2013 (the Rules) because we had no jurisdiction to determine it.

- 5 6. A Notice and Order, dated 21 February, was issued in terms of Rule 27 of the Rules, explaining Employment Judge Walker had considered the file and was of the view the Tribunal had no jurisdiction to determine the claim because the claimant did not have an early conciliation certificate from ACAS and did not appear to be exempt from obtaining one. The Notice further explained the claim would be dismissed on 7 March unless the claimant presented written submissions to the Tribunal explaining why this should not happen.
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7. The claimant, upon receipt of the Notice and Order, contacted ACAS on 26 February, obtained an early conciliation certificate and sent it to the Tribunal.
- 15 8. The Preliminary Hearing today was arranged to determine whether the claim should be permitted to proceed.

Claimant's submissions

- 20 9. Mr Ballantyne explained that he had been in financial difficulty following his dismissal and could not afford to pay the fees to bring a claim. In December 2017 he was listening to radio 4 in his car and heard that fees were "illegal" and that people could now make a claim, but needed to do so quickly. Mr Ballantyne completed a claim form and delivered it to the Tribunal that same week.
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10. Mr Ballantyne did not know he had to obtain an early conciliation certificate from ACAS. He accepted he had ticked the box on the claim form stating "no" to having an early conciliation certificate, but explained he had not understood from the information on the form that he had to obtain such a certificate. He understood that contact could be made with ACAS if he needed help to complete the form.
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11. Mr Ballantyne had acted immediately upon receipt of the Notice and Order to contact ACAS, obtain an early conciliation certificate and send it to the Tribunal.
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Respondent's submissions

- 5 12. Ms McKee submitted the claimant's claim should be dismissed because the Tribunal did not have jurisdiction to hear it by virtue of the fact the claimant did not have an early conciliation certificate from ACAS and was not exempt from this requirement when he presented the claim. The claim was presented on 8 December 2017 and the early conciliation certificate was obtained on 26 February 2018.
- 10 13. Ms McKee referred to the Enterprise and Regulatory Reform Act 2013 which required a prospective claimant to notify ACAS of a dispute before a claim in respect of "relevant proceedings" was presented to an Employment Tribunal. Section 18A of the Employment Tribunals Act provides that before a prospective claimant presents an Employment Tribunal claim about "any matter", they must provide prescribed information about "that matter" in the prescribed manner, to ACAS.
- 15 14. Ms McKee referred to the claim form completed by the claimant and to the fact the form asks "do you have an early conciliation number?". The claimant had entered "no". The form states "nearly everyone should have this number before they fill in a claim form". Ms McKee submitted there was no reasonable basis for the claimant assuming this did not apply to him.
- 20 15. Ms McKee referred to the case of **Cranwell v Cullen UKEATS/0046/14** where a claim presented by the claimant was rejected because the claimant had not complied with the requirement to contact ACAS and obtain an early conciliation certificate before presenting the claim form. The EAT Judge, whilst having sympathy with the reasons why the claimant did not obtain an early conciliation certificate, decided the terms of the rules did not give the Tribunal any discretion and the claim had to be rejected.
- 25 30 16. Ms McKee submitted the claim form should not have been accepted because there was no early conciliation certificate, and she invited me to find a Tribunal had no jurisdiction to hear the claim.
- 35 17. Ms McKee, in response to a question from the Tribunal, submitted the early conciliation certificate obtained by Mr Ballantyne did not cure the earlier defect because the terms of the rules are clear, and the early conciliation must be before the claim is presented.

18. I firstly had regard to Rule 10 of the Rules, which provides that the Tribunal shall reject a claim if it does not contain an early conciliation number.

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19. I also had regard to Section 18A of the Employment Tribunals Act which provides that before a person presents a claim, s/he must provide to ACAS prescribed information about that matter. (There was no suggestion the claimant was exempt from early conciliation and accordingly this was not dealt with by Ms McKee, and is not dealt with in this Judgment).

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20. The effect of these provisions mean, in summary, that before a claimant presents a claim to the Employment Tribunal, s/he must contact ACAS, provide information about the dispute and obtain, from ACAS, an early conciliation number (which is the number of the early conciliation certificate). If the claimant does not obtain an early conciliation number, the Tribunal must reject their claim.

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21. The **Cranwell** case to which I was referred illustrated the effect of the provisions: the claimant's claim in that case had to be rejected because she had not obtained an early conciliation number/certificate.

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22. Mr Ballantyne's case is different to the facts of the **Cranwell** case because his claim was accepted by the Tribunal. This means the claim progressed to be considered by an Employment Judge at Initial Consideration. I have set out above the chronology of what happened, and the fact the claimant was sent a Notice and Order explaining the Employment Judge considered (notwithstanding the claim had been accepted) that a Tribunal did not have jurisdiction (being the legal power) to decide the claim because there was no early conciliation number/certificate.

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23. I decided, having had regard to the rules set out above and the **Cranwell** case, that I have no discretion to allow the claim to proceed without an early conciliation number/certificate from ACAS. I acknowledge Mr Ballantyne acted immediately to obtain an early conciliation number/certificate once he had been told of this issue, but I had to accept Ms McKee's submission that the subsequent production of this certificate did not cure the earlier defect. I accordingly decided a Tribunal does not have jurisdiction to decide Mr Ballantyne's claim. The claim is dismissed.

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24. I noted, and the respondent's representative accepted, that it is open to the claimant to put in another claim form to the Employment Tribunal on the basis of the early conciliation certificate obtained in February.

5 25. I also explained to the claimant that if he was successful today, or if he presents another claim form, there would be another Preliminary Hearing to decide the issue of timebar.

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Employment Judge: Lucy Wiseman
Date of Judgment: 09 May 2018
Entered in register: 15 May 2018
and copied to parties

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