



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Guobys

v

Department of Work and Pensions;
National Insurance Team

Heard at: Cambridge

On: 21 March 2019

Before: Employment Judge Ord

Appearances

For the Claimant: In person

For the Respondent: Mr A Bershadski, Counsel

JUDGMENT ON PRELIMINARY HEARING

1. The claimant's claim is dismissed, the Tribunal having no jurisdiction to hear it.

REASONS

1. The claimant was employed by the respondent until he was dismissed on 17 May 2018. By a single claim form presented on 16 August 2018, he brought complaints, initially, of unfair dismissal, detriment and dismissal for having made protected disclosures and discrimination relying on the protected characteristics of disability and sexual orientation.
2. In due course, he abandoned his claim for discrimination on the grounds of sexual orientation and his complaint of unfair dismissal (the latter due to a lack of jurisdiction, for the claimant had not been employed for two complete years prior to dismissal) and also abandoned claims which he had brought against three named individual respondents.
3. The claimant had not at the time he presented his claim, completed the process of early conciliation through Acas. Early conciliation was not commenced until 28 August 2018 and the early conciliation certificate is dated 30 August 2018.

4. Under section 18A of the Employment Tribunals Act 1996, before any person presents an application to institute relevant proceedings (and the complaints and means of proceedings are all relevant proceedings), the prospective claimant must provide to Acas early conciliation information and under sub-section (8), a person subject to that requirement may not present an application to institute relevant proceedings without a certificate issued by Acas under sub-section (4).
5. Counsel for the respondent has referred me to the case of Cranwell v Cullen (UKEAT PAS/0046/14/SM) and the subsequent case of Tesco Stores Ltd. v Kayani (UKEAT/0128/1/DM). Those two cases make it abundantly clear that the Tribunal has no discretion in this area. If, at the time a claim form is presented, the prospective claimant has not completed the process of early conciliation through Acas and obtained an Acas early conciliation certificate the Tribunal may not consider the claimant's complaints (unless one of the exceptions under s.18A(7) apply, which is not the case here).
6. The claimant feels deeply aggrieved because he was relying on advice from his Trade Union Representative. It appears that representative did not advise the claimant of the need to obtain an early conciliation certificate.
7. Whilst I have the utmost sympathy for the claimant in this case, as he, on the face of the information presented to me, finds himself in this situation through no fault of his own, the matter is not - as the Honourable Mr Justice Langstaff said in Cranwell - one of sympathy, but of law. The requirements of s.18A of the Employment Tribunals Act 1996 are clear.
8. Additionally, Employment Tribunal Rules, rule 10 and 12 provide, respectively, that:
 - 8.1 the Tribunal shall reject the claim if it does not contain an early conciliation number or confirmation that the claim does not institute any relevant proceedings or that one of the early conciliation exemptions applies; and
 - 8.2 under rule 12, a claim form should be referred to an Employment Judge and the Judge should reject it if the Judge considers that (effectively) the claim form does not comply with rule 18A.
9. The claim form was not rejected in this case, it is an administrative failing of the Tribunal service but it does not alter the jurisdictional point. The Tribunal has no jurisdiction to hear a claim which was instituted prior to the commencement of the early conciliation process as set out in s.18A(1) of the Employment Tribunal Act 1996 and in accordance with rules 10 and 12 or the Employment Tribunal Rules of Procedure 2013.

10. For those reasons the claim is dismissed.

Employment Judge Ord

Date: 29 March 2019

Sent to the parties on: 10 April 2019

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For the Tribunal Office