



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs G Humphrey  
**Respondent:** Wesco Aircraft Europe Ltd  
**Heard at:** Leeds      **On:** 29 March 2019  
**Before:** Employment Judge Davies  
**Representation**  
Claimant: In person  
Respondent: Ms Garnett (HR)

## RESERVED JUDGMENT

1. The Tribunal does not have jurisdiction to hear the Claimant's claim of unfair dismissal because she did not comply with the requirement in s 18A Employment Tribunals Act to provide prescribed information to ACAS about the matter to which these proceedings relate.
2. It was reasonably practicable for her to present a valid claim with a valid Early Conciliation certificate number within the time limit in s 111 Employment Rights Act 1996 and therefore time cannot be extended to allow her to do so now.

## REASONS

### Introduction

- 1.1 This was a hearing to decide:
  - 1.1.1 whether the claim was properly accepted by the Tribunal, specifically with regard to the need for an ACAS Early Conciliation Certificate number which related to the matter which the claim concerns;
  - 1.1.2 whether the Claimant should be permitted to amend her claim and/or to rectify any defect in relation to the ACAS Early Conciliation requirement;
  - 1.1.3 if so, whether time should be extended on the basis that it was not reasonably practicable for a compliant claim to be presented in time.
- 1.2 The Claimant represented herself and the Respondent was represented by Ms Garnett, its HR officer. The Claimant had brought some documents with her, which were copied and admitted in evidence by agreement.

### The Facts

- 3.1 These issues arose in the following circumstances. Mrs Humphrey presented a claim of unfair dismissal on 14 January 2019. She was at that time represented by reputable solicitors, Chadwick Lawrence LLP. The claim form included an Early Conciliation Certificate number ending ...27/17/59 ("the EC Certificate"). The claim

was accepted by the Tribunal administration. The Respondent presented its response on 13 February 2019. In box 3.1 it explained that it did not agree with the details given by the Claimant about early conciliation because there had been no contact from ACAS to the Respondent in respect of this claim.

- 3.2 Chadwick Lawrence came off the record on 22 February 2019 and the Claimant has been representing herself since then.
- 3.3 The Respondent wrote to the Tribunal on 1 March 2019 to request a preliminary hearing to deal with the question whether the Early Conciliation process had been complied with. It drew attention to the fact that the EC Certificate was two years old and said that it related to other employment concerns the Claimant had at that time. The Respondent did not believe that the Claimant had used the Early Conciliation process or received a certificate in respect of the unfair dismissal claim she had presented to the Tribunal. The Claimant wrote to the Tribunal on 3 March 2019. She agreed that EC Certificate did not relate to an attempt at early conciliation in respect of unfair dismissal. She said that it related to a grievance raised that would form part of the evidence in the case. She said that Chadwick Lawrence were at fault and added that she had now contacted ACAS personally on 21 February 2019 to attempt to initiate Early Conciliation. She had not been able to obtain a second Early Conciliation Certificate yet.
- 3.4 This preliminary hearing was listed to deal with the issue.
- 3.5 The underlying events can be briefly summarised as follows. In early 2017 the Claimant applied unsuccessfully for a promotion within the Respondent to a team leader role. She was not invited to an interview. She had a meeting with her line manager to discuss this on 24 March 2017. A further meeting took place on 24 April 2017. The Claimant was not happy with the conduct of the meeting. She did not return to work after 24 April 2017. On 28 April 2017, the Claimant was suspended from work. It was alleged that she had told a colleague that she would “sabotage the training” of the person who had been appointed into the role for which she had unsuccessfully applied. After an investigation the Claimant’s suspension was lifted. The Respondent wrote to her on 5 May 2017 to tell her that she could return to work on 11 May 2017.
- 3.6 The Claimant emailed Ms Garnett on 8 May 2017. She said that now that she was not suspended she would like to continue the grievance process regarding her harassment case against two named colleagues after her “unfair meeting” on 24 April 2017. She added “I have also had to proceed with ACAS conciliation as we are near the deadline on the three months (less one day) to proceed with Tribunal action.” She concluded her email by saying that her goal was to get back to work fairly and in an environment where she would not continually be harassed by her manager.
- 3.7 It is clear from the Claimant’s email to Ms Garnett that she had started ACAS early conciliation at that stage. The EC Certificate was issued as a result. It related to an Early Conciliation notification made on 8 May 2017 and was issued on 19 May 2017.

- 3.8 As noted, in her email to Ms Garnett the Claimant explained that she had started ACAS Early Conciliation because she was near the deadline of three months less a day for starting Tribunal proceedings. I asked her what had happened three months less a day previously. She said that in February she was not even allowed to interview for a position she had effectively been doing the work for. That made it clear that she had contacted ACAS in relation to her unsuccessful application for promotion in February 2017.
- 3.9 The Claimant remained off work, while attempts to resolve the situation continued. The Claimant had raised a grievance and grievances were also raised about her. She instructed a solicitor and there was ongoing correspondence between him and the Respondent. The Claimant produced a copy of a note made by her solicitor in July 2017. I explained that she was entitled not to disclose this legally privileged document but she chose to do so. Her solicitor referred at that stage to ACAS Early Conciliation. He suggested that if the Respondent's grievance response of 18 May was regarded as the "last act of discrimination" they needed to start Early Conciliation by 17 August and this would extend the time limit for a Tribunal claim to 17 September. It was clear that at that stage, the solicitor considered that a fresh ACAS Early Conciliation certificate would be needed to deal with more recent events said at that stage to amount to discrimination. It does not appear that there was any further notification to ACAS.
- 3.10 In August 2017 the Claimant was asked to attend a disciplinary hearing to address allegations of insubordination, inappropriate conduct and a breakdown of trust. That related at least in part to events that had taken place prior to 24 April 2017. However, the Claimant had a period of maternity leave from September 2017 to October 2018 so the disciplinary process was put on hold. On her return to work the planned disciplinary hearing took place and she was dismissed on 15 October 2018.
- 3.11 The Claimant retained the same solicitor who had advised her in July and August 2017 to deal with her dismissal. That led to the presentation of her claim form in these proceedings, which referred to the EC Certificate. I asked her about the solicitor's advice that she would need a fresh Early Conciliation Certificate and about why that had not happened. She said that her solicitors were instructed to do it correctly. She was expecting them to contact ACAS and do Early Conciliation. The first she knew was when she had a phone call from the secretary asking if she had a different certificate number, which she did not.

#### **Legal principles**

- 4.1 Under s18A(1) Employment Tribunals Act 1996, before a person presents an application to start an employment Tribunal proceedings relating to "any matter" the person must provide certain information to ACAS about "that matter." Under s 18A(4) and ACAS conciliation officer must issue a certificate if a settlement is not reached or is not possible. Under s 18A(8) a person to whom s 18A(1) applies may not present an application to start Tribunal proceedings without a certificate under s 18A(4).
- 4.2 Those provisions were considered by the Employment Appeal Tribunal in *Compass Group UK and Ireland Limited v Morgan* [2017] ICR 73. In that case the Claimant had been moved to a different location and a less senior role. She

instructed a solicitor and started early conciliation. Two months later she resigned and claimed constructive unfair dismissal. The Employment Tribunal found that her constructive unfair dismissal claim relied on matters that formed part of the ACAS notification. The Employment Appeal Tribunal found that the Employment Tribunal was entitled on the facts to conclude that there was a connection and that the Claimant had contacted ACAS about “the matter” as required under s 18A. The Employment Appeal Tribunal made clear that there is no temporal or other limit on the validity of an Early Conciliation certificate. It is a matter of fact and degree for an Employment Tribunal whether Tribunal proceedings relate to the matter in respect of which the Claimant contacted ACAS.

- 4.3 Those principles were more recently considered and applied in the case of *Akhigbe v St Edward Homes Ltd and ors* EAT 0110/18.
- 4.4 The three-month time limit for bringing a claim of unfair dismissal and the circumstances in which that time limit can be extended are governed by s 111 Employment Rights Act 1996. If the claim was not brought in time, it is for the Claimant to satisfy the Tribunal that it was not reasonably practicable to bring her complaint within the time limit. Reasonably practicable means something between “reasonable” and “physically possible”: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] ICR 372, CA. It is a question of fact for the Tribunal whether it was reasonably practicable for the complaint to be brought in time. The factors to be considered include whether the Claimant has been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the Claimant or his adviser which led to the failure to present the complaint in time: see *Palmer and Saunders*.
- 4.5 Where a Claimant instructs solicitors to present a claim is that it will normally be presumed that it was reasonably practicable to present the claim in time: see *Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53, CA and *Wall's Meat Co Ltd v Khan* [1979] ICR 52, CA. The Claimant's remedy is against her solicitors in such circumstances.

### Application of the law to the facts

- 5.1 Applying those principles in this case, I start with the question whether the Claimant had complied with s 18A Employment Tribunals Act 1996 before presenting her unfair dismissal claim. Had she provided to ACAS the appropriate information about the matter to which that claim relates? I have found that she had not.
- 5.2 I find as a matter of fact and degree that these unfair dismissal proceedings do not relate to the matter in respect of which the Claimant contacted ACAS. The matter in respect of which the Claimant contacted ACAS was the failure to shortlist her for the role she applied for in February 2017. She contacted ACAS in May 2017 and received the Early Conciliation Certificate then. This unfair dismissal claim relates to her dismissal by the Respondent for insubordination, inappropriate behaviour and a breakdown of trust. The two events are not wholly unrelated – the Claimant's alleged conduct and the breakdown in relationship were, in part, related to the unsuccessful job application. However, that is not in my view a sufficient connection. The Early Conciliation Certificate related to a potential complaint about a discriminatory failure to interview the Claimant for a job role. These proceedings

relate to an express dismissal more than 18 months later for alleged conduct that followed that failure. In reaching that view, I take into account that the view of the Claimant's solicitor was that a further Early Conciliation Certificate would be needed, and indeed that Claimant's own understanding was that one was needed and would be obtained. I therefore find that the Claimant did not comply with the requirement in s 18A Employment Tribunals Act 1996 before presenting this unfair dismissal claim. The Tribunal has no jurisdiction to deal with it and it should be dismissed.

- 5.3 As indicated above, since finding out that the old Early Conciliation Certificate had been relied on, the Claimant has stopped instructing her solicitors and has attempted to obtain a fresh certificate. She has not yet obtained one. However, if she were to do so and were to present a fresh Tribunal claim for unfair dismissal, that claim would plainly be substantially out of time. The first question the Tribunal would ask in deciding whether to extend time is whether it was reasonably practicable to present that claim in time. Essentially, the Tribunal would be asking whether it was reasonably practicable for the Claimant to comply with s 18A Employment Tribunals Act 1996 by initiating Early Conciliation in relation to her complaint of unfair dismissal and obtaining a certificate relating to that matter. I was in a position to determine that issue, even though the Claimant had not yet presented a fresh claim.
- 5.4 I find that it was reasonably practicable for the Claimant to present a valid claim, having obtained an appropriate Early Conciliation certificate, within the time limit. She was represented by experienced employment law solicitors throughout these events. They clearly understood the need for a further Early Conciliation certificate as long ago as July 2017. It was reasonably practicable for them to ensure that ACAS were contacted, that a fresh Early Conciliation certificate was obtained and that the correct certificate number was entered in the claim form. In those circumstances, the first condition in s 111 Employment Rights Act 1996 for extending the time limit is not satisfied. Time would not therefore be extended to enable the Claimant to present a further unfair dismissal claim with a fresh Early Conciliation certificate.

**Employment Judge Davies**  
**29 April 2019**

FOR EMPLOYMENT TRIBUNALS

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