



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MRS H HARRIS

AND

Respondent
DREAMS LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF ON: 2ND MAY 2019

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- WRITTEN REPRESENTATIONS

FOR THE RESPONDENT:- WRITTEN REPRESENTATIONS

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claims are dismissed as the tribunal does not have jurisdiction to hear them.

Reasons

1. On 23rd May 2018 the claimant submitted an ET1 setting out claims for race and age discrimination. These are claims which in the ordinary course of events would require the claimant to have entered ACAS Early Conciliation and obtained an EC certificate to give the tribunal jurisdiction to hear those claims. However in Box 2.3 the claimant has ticked that her employer had already been in touch with ACAS which is an exception to the general proposition set out above.

2. Following receipt of the ET3 the case came before EJ Ryan on 10th August 2018. In its ET3 the respondent had disputed that it had been in contact with ACAS and contended the tribunal had no jurisdiction to hear the claim. EJ Ryan set out in detail the position summarised above (paras 2 to 7) and at paragraph 8 set out the matters that should be addressed in a witness statement from the claimant, setting out why she believed that the respondent had contacted ACAS.
3. By a letter date 29th August 2018 the claimant complied with EJ Ryan's order. In it she set out her complaints and how it was dealt with internally by the respondent but did not address the issue identified by EJ Ryan of why she believed that the respondent had approached ACAS. There is nothing in the statement which relates to his issue at all. This was pointed out to the claimant by EJ Vernon who extended time for compliance with the earlier order. On 3rd October 2018 the claimant replied saying that she was under the impression that the respondent was going to contact ACAS as a statement had been taken from her and she was under the impression that it was going to be sent to a "work tribunal". This once again did not address the specific matters set out in EJ Ryan's order and on 28th November 2018 EJ Davies gave her a further opportunity to reply. On 5th December the claimant replied again setting out that the Store Manager had taken a statement from her and that "everything was going to be taken care of and I did not need to do anything else and that she would take care of the matter."
4. On 14th January 2019 the respondent wrote asking for the claim to be struck out on two bases. Firstly that the claimant had failed to comply with order of EJ Ryan; and secondly because even on her own account she had not commenced ACAS Early conciliation and there was no evidence that the respondent ever had. Her claim therefore should be struck out as the tribunal had no jurisdiction to hear it and/or it had no reasonable prospect of success.
5. On 4th March 2019 the tribunal wrote (at my direction) pointing out that the issue was one of fact and that whatever the claimant's belief there was nothing in any of letters that contradicted the respondent's assertion that it had not contacted ACAS and saying "The EJ is sympathetic to the claimant but on the basis of her written communication it appears inevitable that an EJ would be bound to conclude that the ET has no jurisdiction to hear the claim". The claimant was asked whether in those circumstances she sought an oral hearing or was content for a decision to be taken on the basis of the written material she had supplied. On the 18th March 2019 the claimant replied saying " I am happy for the Judge to make the decision for me."
6. For the reasons set out above there is nothing in any of the material supplied by the claimant which indicates that there is a live issue as to whether the respondent contacted ACAS. Indeed all of the claimant's contentions relate to the respondents internal procedures and do not mention ACAS at all. On that basis in my judgement the tribunal is bound to conclude that the requirements of s18A and 18B Employment Tribunals Act 1996 have not been complied with and that the tribunal does not have jurisdiction to hear the claim.

**Judgment entered into Register
And copies sent to the parties on**

.....3 May 2019.....

**.....
for Secretary of the Tribunals**

EMPLOYMENT JUDGE Cadney

Dated: 2nd May 19