EMPLOYMENT TRIBUNALS

Between

Claimant: **Mr R Bioletti**

Respondent: **King's College London**

Heard at London South Employment Tribunal on 11 July 2018

Before Employment Judge Baron

Representation:

Claimant: **Mrs Joan Bioletti – The Claimant's mother**

Respondent: **Sophia Berry - Counsel**

JUDGMENT AT A PRELIMINARY HEARING

It is the judgment of the Tribunal that the claims are rejected in accordance with rule 12(2) of the Employment Tribunals Rules of Procedure 2013.

REASONS

1 This was a public preliminary hearing concerning the validity of a claim made by the Claimant to the Tribunal taking into account the provisions of procedural provisions in the Employment Tribunals Rules of Procedure 2013. The rule in question is rule 12, the relevant parts of which are as follows:

> **Rejection: substantive defects**
> **12.**—(1) 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) – (f) . . . . .
> (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) . . . .
> (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.

2 There was also an issue as to the jurisdiction of the Tribunal taking into account the statutory time limits.

3 On 10 August 2017 Mrs Bioletti presented a claim form to the Tribunal on behalf of the Claimant. She stated that the Claimant's employment by the Respondent had ended on 30 April 2017, a date with which the Respondent agrees. It is a matter of record that the Claimant contacted ACAS in accordance with the early conciliation procedure on 12 June 2017, and the certificate was issued on 12 July 2017.

4 On the claim form none of the boxes in section 8.1 were ticked other than the final box indicating that another type of claim was being made. The text following that was as follows:

> The unfair way Robert was treated at work forcing him to seek medical help for anxiety and depression. Also his treatment whilst on sick leave.

5 In section 8.2 of the claim form there were four paragraphs set out. The first three refer to the possibility of redundancy and the Claimant becoming upset following a restructuring which seemed to result in a demotion of the Claimant. The final paragraph is as follows:

> Robert became ill with severe anxiety and depression and went sick on 5th January 2016. Since this time he has been seen by several medical professionals. KCL have been made fully aware of the complexity of Robert's illness by myself and his doctors but have refused to accept any responsibility. I feel that during this whole process KCL have just gone through the motions without any intentions to assess Robert as an individual.

6 In section 12 of the claim form the box was ticked to indicate that the Claimant did not have a disability.

7 On receipt the form ET1 was not referred to a judge under the provisions of rule 12(1)(a) or (b).

8 In the response form ET3 presented to the Tribunal on 23 September 2017 the Respondent asserted that the Claimant had failed to set out any claims over which the Tribunal had any jurisdiction, and also that the claim ought to have been rejected under rules 12(1)(a) or (b). In a covering letter the Respondent applied for the claim to be dismissed for that reason, or that it be struck out as having no reasonable prospect of success.

9 In accordance with the usual procedure of the Tribunal a private preliminary hearing for case management purposes was listed for 27 October 2017. That hearing was in fact postponed. In preparation for the hearing on 27 October 2017 Mrs Bioletti completed the standard form of agenda and provided a pack of documents on 23 October 2017. In the agenda she described the claim, remedy sought and issues to be decided as:

> Unfair treatment suffered whilst at work leading to severe stress / anxiety / depression. Lack of professionalism shown by the respondent and their actions whilst on sick leave have only added to his stress prolonging his recovery, making him unable to return to work.
>
> To acknowledge and take responsibility for their actions and compensation as Robert is unable to work and is reliant on benefits, also the missed opportunities in his career.
>
> Did King's College London fulfil their responsibility as an employer in regards to health and safety and the welfare of their staff. Where [presumably 'were'] appropriate procedures followed whilst Robert was on sick leave due to work related stress.

10 In the pack of documents supplied was what Mrs Bioletti described as the 'Details of case.'[1] It set out what is said to have been the history of the Claimant's employment resulting in his illness, and thereafter. Paragraph 12 is as follows:

> As you will appreciate Robert is frustrated with my dealings with KCL but is very disappointed and angry at the way KCL has treated him. It was made clear to all concerned at the consultation meeting, the dismissal and appeal that firstly Robert's illness was triggered by the working conditions and the way he had been treated at work, secondly the way HR has conducted themselves whilst Robert has been absent, without any regard or sensitivity to the complexity of his illness, adding to his stress and anxiety and this has continually hampered his recovery, making any hope of Robert being able to return to work for KCL highly unlikely.

11 The public preliminary hearing took place on 30 January 2018 but did not decide the matters. The first paragraph of the notes of that hearing is as follows:

> It was unclear from the claim form what claims the Claimant was bringing. This was a public preliminary hearing to hear the Respondent's application to strike the Claimant's claim out on the basis that it showed no cause of action. During the discussion with the Claimant it was not clear whether the Claimant was alleging unfair dismissal and disability discrimination or whether he was wanting to bring a personal injury claim as he said that he wanted the Respondent to take responsibility for his ill health which he attributes to his actions.

12 The judge then helpfully set out a summary of the law relating to unfair dismissal and the various possible matters constituting disability discrimination. The applications by the Respondent were deferred to this hearing.

13 On 2 April 2018 Mrs Bioletti then sent in a further document with details of the claims. She referred to unfair dismissal specifically and said that it was accepted that the reason for the Claimant's dismissal was his long term sick leave. It was then said that the Respondent's conduct had contributed to the Claimant's illness. Mrs Bioletti then set out matters which in my view a Tribunal could properly take into account when considering the fairness of the dismissal.

14 The second heading was that of disability, under which rubric the following was said:

> Due to his mental condition and on the advice of his GP, Mr Bioletti was unable to attend King's College Formal Consultation meetings and Disciplinary and Incapability Hearin in person. His mother Mrs Joan Bioletti attendee theses meetings on his behalf. When notes of meetings were received by Mrs Bioletti they totally misconstrued what had actually been said. It was suggested by a third party solicitor that Mrs Bioletti be accompanied by a person who would take notes for her. This was rejected by the respondent. ACAS suggested she request the meetings / hearings be recorded. This was also rejected by the respondent.

15 And so the matter eventually came before me. Miss Berry submitted that the claim should have been referred to an Employment Judge by a Tribunal clerk in accordance with either of paragraphs (a) or (b) rule 12(1), and then the judge would have had to reject it under rule 12(2). I was referred to the recent Court of Appeal decision in *Secretary of State for*

---

[1] I did not read paragraphs 13 to 17 inclusive as it was agreed that they contained details of privileged discussions.

Business, Energy and Industrial Strategy v. Parry [2018] EWCA Civ 672. The facts are significantly different from those prevailing here, and Bean LJ held that on the particular facts of *Parry* the respondent in that case would have known the substance of the claim being made, and would have been able sensibly to respond to the claim. My attention was drawn to paragraph 32:

> 32 I should add that in holding that a sensible response could have been given to this claim I am not laying down a general rule that the respondent to a claim in an employment tribunal must always be treated, for the purposes of rule 12(1)(b), as having detailed knowledge of everything that has occurred between the parties. If, for example, a claimant brings a claim for sex or race or disability discrimination without giving any particulars at all, or attaching the particulars from someone else's case, that ET1 might well be held to be in a form to which the employer could not sensibly respond and thus properly rejected under rule 12(1)(b). But in many unfair dismissal cases there will be a single determinative issue well known to both parties, so that even if particulars are omitted from the ET1 the employer can sensibly respond, for example: (a) "the Claimant was not dismissed; she resigned on [date X]"; or (b) "the Claimant was dismissed on [date X] on the grounds of gross misconduct, which in the circumstances the Respondent acted reasonably in treating as a sufficient reason for dismissal".

16 Miss Berry pointed out that on the claim form the boxes relating to unfair dismissal and disability discrimination had not been ticked, and yet with effect from 2 April 2018 the Claimant was now seeking to bring such claims. She said that the natural reading of the claim form and later documents was that this was a claim for damages for personal injury over which the Tribunal did not have jurisdiction. The claim should therefore have been rejected in the first place.

17 Miss Berry also submitted that if the document of 2 April 2018 were seen as an application to amend any claim which did exist then the application had been made well out of time, and that time should not be extended in respect of either category of claim. She pointed out that in paragraph 7 of the Details of case' referred to above mention was made of advice having been taken from Cambridge House Law Centre at some stage before his employment was terminated.

18 Mrs Bioletti provided me with some general information about the history of the matter, without being specific about dates. I am satisfied I have the general picture. The advice from Cambridge House Law Centre was given in June 2016, and related to the Claimant's health, and not the termination of his employment which had not by then occurred. The Law Centre would only provide one appointment, and consequently she could not obtain further advice.

19 Mrs Bioletti had known about Employment Tribunals and ACAS for some time, and she had been seeking advice from ACAS on a regular basis. She had access to the internet and had flicked through the ACAS website.

20 Mrs Bioletti said that she had not wanted to make a claim to the Tribunal because she thought that it would not be good for the Claimant. There was no dispute that the reason for the dismissal was that the Claimant was incapable of working but, said Mrs Bioletti, she had not been aware of the 'ins and outs' of a claim of unfair dismissal until the preliminary hearing on 30 January 2018.

21 I now turn to my conclusions. I must record that I have taken into account the Tribunals are intended to be accessible to lay people, and that the overriding objective of the Tribunal is to do justice and for that purpose unnecessary formality is to be avoided and there is to be flexibility in the proceedings. However the Employment Tribunals Rules of Procedure 2013 govern the procedure in the Tribunal and cannot simply be ignored.

22 My primary conclusion is that this claim ought to have been referred to an Employment Judge at the time that it was presented under both of paragraphs (a) and (b) of rule 12(1), and that on such referral the judge would have had to reject it under rule 12(2). Insofar as a legal claim can be divined from the text of the claim form it is a personal injury claim, over which the Tribunal has no jurisdiction. Mrs Bioletti could have ticked the box to indicate that a claim of disability discrimination was being made, but she did not do so. Further, the box asking whether the Claimant had a disability was ticked to indicate that he did not. The purpose of that box is primarily administrative to enable the Tribunal administration to know if any special arrangements need to be made for a claimant, but the fact that it was stated that the Claimant was not disabled is a further element to indicate that there was no disability discrimination claim. Further there was nothing to indicate that a claim of unfair dismissal was being made. On that basis the Respondent could not sensibly respond to the claim because there was not one over which the Tribunal had jurisdiction.

23 I do not consider that the failure of a Tribunal clerk to refer the matter to a judge at the outset prevents the procedural position being corrected at this stage. I therefore decide that the claim form is rejected under rule 12(2) with effect from the date that this document was sent to the parties. The Claimant is recommended to take advice about the effect of that decision.

24 I also considered the alternative position in the event that my conclusion above is wrong. If there was no valid claim before the Tribunal then there was nothing to amend. If there was a claim which could be amended, then the issue arose as to whether the original claim form ET1 should be amended in accordance with the document supplied by Mrs Bioletti dated 2 April 2018.

25 In respect of the unfair dismissal claim, time is to be extended where a claimant can show that it was not reasonably practicable for the claim to have been presented in time. That the Claimant failed to do. Mrs Bioletti was aware of her right to bring a claim to the Tribunal, but had positively decided not to do so as she considered that it would not be good for the Claimant. That is a value judgment which she and the Claimant were of course perfectly entitled to make, but that does not mean that it was not reasonably practicable for the claim to have been presented in time.

26 The claim of disability discrimination is different. The Tribunal may extend time where it is just and equitable so to do. On analysing the text of the document of 2 April 2018 it appears that the two matters of which the Claimant is complaining are that in his absence from meetings he (through his mother) was not allowed to have either a notetaker present nor to have the meeting recorded. I can see that there is some potential merit in those points. Miss Berry did not maintain that there was any specific prejudice

which would be accused to the Claimant beyond having to defend the claim. While of course costs will be incurred in connection with defending any claim this is not a matter which will incur weeks of Tribunal time. I would therefore have extended time for that point, or those two points, to have been considered. The ability of the Claimant to pursue them would of course have depended on the Respondent accepting, or the Tribunal finding, that the Claimant was a disabled person at the material time.

Employment Judge Baron

20 July 2018