



EMPLOYMENT TRIBUNALS

Claimant
Mrs C Mewa

v

Respondent
Clo-Clo Ltd

Heard at: Watford

On: 24 September 2019

Before: Employment Judge R Lewis

Appearances

For the Claimant: Mr M Walker, Counsel

For the Respondent: Ms A Grant, Solicitor

JUDGMENT

1. The respondent is correctly named above.
2. The tribunal does not have jurisdiction to hear the claim, which is struck out.

REASONS

1. These reasons were requested by Mr Walker after judgment had been given.
2. This was the listed hearing of a claim for unfair dismissal and holiday pay presented by the claimant on 24 September 2017. It had been the subject of case management hearings on 2 February 2018 and 22 March 2019, on which latter date the present four day listing was arranged.
3. At the start of this hearing, there was an agreed bundle in excess of 400 pages, and three witness statements on behalf of the respondent and two on behalf of the claimant.
4. It appeared to me, from an initial reading of the tribunal file and papers, that there was a potential jurisdictional issue. (I had concerns about other aspects of case preparation, which I mentioned to the representatives). I explained the jurisdictional point, and then adjourned for about 45 minutes

to enable the parties to deal with it. I then heard submissions and after the lunch adjournment gave judgment.

5. The response pleaded that the claim was out of time, and that the claimant had been fairly dismissed for gross misconduct. I have made no finding on any aspect of the merits of the case, or on either of those points. The matters material to the present judgment are the following.
6. It was agreed that the effective date of termination was 25 May 2017. Day A was 25 July and day B was 25 August. It was agreed that allowing for “stop the clock”, the final day for presentation of the claim was Monday 25 September.
7. The tribunal file contained the following documents and information, the details of which were not available to the parties and not known to them until explained by me at this hearing:
 - 7.1 Particulars of claim were signed by Mr Wayne Lewis of counsel dated 22 September (Friday);
 - 7.2 The claim form was presented on-line, apparently at 23:40 hours on Sunday 24 September;
 - 7.3 Mr Lewis received an on-line receipt reference for the claim form, 18CR etc;
 - 7.4 The 24 September claim form was forwarded electronically to the Watford tribunal, and printed in the office here. The file copy of the claim form of 24 September was marked by a member of the office staff at the Watford tribunal “Not actioned” by a sticker attached to it;
 - 7.5 Mr Lewis sent a letter to the Watford tribunal dated 25 September by ordinary post. The letter on file was stamped as received on 26 September.
 - 7.6 The letter said:

“I write to enclose form ET1 and the particulars of claim, all filed on line yesterday on behalf of my client, Mrs Mewa.

I notice from the printed off version that the on-line claim had changed details and the address of the Respondents and for this reason I also write this letter to add the annex A referred to in the particulars of claim that should be attached to the particulars of claim but could not be uploaded.

I hope these documents will prove to be helpful in creating the tribunal file and records along with a copy of the on-line application form enclosed.”
 - 7.7 Attached to the letter was a second version of the ET1, with separate particulars of claim. The ET1 was the same as that presented on line the day before, except that boxes 2.1 and 2.2 were crossed out by hand. In box 2.1 was written “See particulars of claim.” The

address at boxes 2.2, with postcode and phone number, was crossed out, and nothing written in place of the cross-out. This second ET1 was date stamped as received at Watford on 26 September.

- 7.8 The attached particulars of claim contained the correct name of the respondent. They were headed 18CR, and therefore must have been sent after receipt of the on-line receipt e-mail. It follows that they cannot have been attached to the online ET1.
- 7.9 The tribunal office therefore had two documents about the same case, the on-line ET1 of 24 September and Mr Lewis' letter of 25 September attaching a slightly different ET1 and particulars of claim. In accordance with usual office routine, they were referred together to a judge on 17 October.
- 7.10 On 17 October, I directed acceptance and service of the proceedings and they were served the same day.
8. I now need to turn to the jurisdictional issue which I identified. I deal with the simpler point first.
9. The letter of 25 September, received the next day, enclosed an ET1, particulars of claim, and an early conciliation certificate. Could they constitute a fresh, second ET1? I suggested to the parties that they could not, as presentation to the Watford office by post is not presentation in accordance with the Presidential Directive. Mr Walker agreed and did not seek to persuade me that that was valid presentation of a second ET1. It followed that the 24 September ET1 was the first and only valid ET1.
10. The 24 September ET1 showed the following defects on its face:
 - 10.1 Box 2.1 did not contain the name of the respondent, but the name Maryanne Lewis. The respondent replied that no person of that name was involved in the ownership or management of the company. I was told at this hearing that that is in fact the name of the claimant's representative's wife.
 - 10.2 Box 2.2 contained a correct building number (58) for the respondent, but the remaining five lines of box 2.2 contained the practising address of Mr Wayne Lewis, in very similar but not identical terms to the representative details at box 11.
 - 10.3 At box 2.4, and again paragraphs 1 and 2 of box 8.2, the ET1 gave correct addresses for the respondent, both the workplace and the registered office.
 - 10.4 The early conciliation certificate was in the name of the respondent above. The particulars of claim were not attached.

10.5 It follows that the on-line 24 September ET1 did not anywhere contain the name of the respondent at all, and therefore of course, not the name that was on the early conciliation certificate.

11. Rule 10 provides so far as material:

“(1) The Tribunal shall reject a claim if – (b) it does not contain all of the following information – (iii) each respondent’s name.....”

“...(2) the form shall be returned to the claimant with a notice of rejection explaining why it has been rejected. The notice shall contain information about how to apply for a reconsideration of the rejection”.

12. Rule 12 provides so far as material:

“(1) The staff of the Tribunal office shall refer a claim to an Employment Judge in they consider that the claim or part of it may be – (f) one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate (2a) the claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of the kind described in (f) ... Unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interest of justice to reject the claim.”

13. Rule 13 provides a mechanism for reconsideration of a rejection under rules 10 or 12, and includes at rule 13 (4):

“If the Judge decides that the original rejection was correct, but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified”.

14. As stated above, the claim was presented the day before limitation expired and referred to a Judge over three weeks later. That delay was in the ordinary course of business, and nothing turns upon it. At that time, I did not appreciate that the respondent named on the ET1 (Maryanne Lewis) was not the employer, and I failed to direct rejection of the claim form.

15. The claim presented on 24 September failed to supply minimum information, namely the name of the respondent. It was therefore mandatory under rule 10 to reject it. In finding that the intervening passage of time and case management does not change the position, I note in the headnote of Eon Control Solutions Limited v Caspall, UKEAT/0003/19 that (in the context of early conciliation) rejection “... was a mandatory requirement that was not limited to a particular stage of the proceedings”.

16. If proper procedure had been followed, rejection would have taken place on 17 October. It would have been open to the claimant to apply then for reconsideration, perhaps clarifying that he had remedied the defect on 26 September, when the tribunal received an ET1 with particulars which named the correct respondent. If that had happened, the claim might have been accepted on the basis of rule 13(4), with acceptance taking place on 26 September. That would have been one day out of time.

17. That did not happen, and therefore the question of whether it was reasonably practicable for the claim to have been presented within time was strictly not before me. Likewise, as Mr Walker did not ask me to rely on the 26 September ET1 as a valid ET1, I was not asked to consider whether it was reasonably practicable to have presented that ET1 in time.
18. However, having heard Ms Grant's submissions on the point, I add the following. The particulars of claim were dated 22 September and were quite long. The claimant must have instructed counsel by the morning of that day at the very latest. The claim could well have been presented at any time between then and 25 September. Mr Walker accepted that he had difficulty submitting that it was not reasonably practicable for the claim to be presented in time, when an attempt to do so was made by counsel. I agree.
19. There was however a second and more compelling point. In the course of 25 September, on his own account, Mr Lewis saw the hard copy of the ET1 that he had presented and realised that he had left out the name of the respondent and given the wrong address. That was the last day for presentation. He could have remedied the defect that day by presenting a second ET1 on line, properly filled in, before 23.59 hours.
20. In conclusion, the claim was presented on 24 September. It was mandatory to reject it, and mandatory to reject it at any stage of the proceedings in accordance with rule 10.
21. In light of delay and error (including my own) within the tribunal, I have considered the hypothetical application of rule 13 (4). That however leads to the conclusion that the defect in the 24 September ET1 was corrected on 26 September, after expiry of limitation. I accept that I have not been asked to rule on whether it was reasonably practicable for a claim to have been presented in time; but that Mr walker pointed to some of the difficulties in that submission.
22. I add finally that I have attached no weight, for or against the claimant, to Mr Walker's submission that Mr Lewis reported that the errors in box 2 of the 24 September ET1 came about because the online ET1 auto-filled the wrong details.

Employment Judge R Lewis

Date: 2 /10 / 2019

Sent to the parties on: 1 /11 / 2019

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For the Tribunal Office