



## EMPLOYMENT TRIBUNALS

Claimant

**Mr. S. Roberts**

v

Respondent

**Eliments Limited**

Heard at: **Leeds**

On: **1 November 2019**

Before:

**Employment Judge Wedderspoon**

### Appearance:

For the Claimant: **In person**

For the Respondent: **Mr. D. Robinson Young, Counsel**

## JUDGMENT

1. The Claimant's claim is struck out as the Tribunal does not have jurisdiction to consider it in that the claimant has failed to comply with the requirement as to ACAS early conciliation in section 18A of the Employment Tribunals Act 1996.
2. The respondent's application for a costs order is refused.

## REASONS

1. By Claim Form dated 21 October 2019 the Claimant appeared to seek interim relief. He had ticked the box on paragraph 2.3 *"My claim consists only of a complaint of unfair dismissal which contains an application for interim relief"*.
2. His case is that he was employed by the Respondent as an Installations Manager from 2 April 2018 to 21 October 2019. He claims unfair dismissal. The particulars of his claim are set out at paragraph 8.2 of the Claim Form and state *"A colleague left to start his own business, he approached me to work with him, however I haven't confirmed or committed to anything. I was on holiday at the time. My employer heard on the grapevine I'd received an offer of new employment and dismissed me on my return to work without any satisfactory explanation."*
3. On discussion with the Claimant at the hearing he was not applying for interim relief at all and did not know what the term meant. He claimed he had been dismissed unfairly on his return from holiday and should have been paid 4 weeks notice. I discussed with him the circumstances when interim relief could

be obtained at the Employment Tribunal. Following discussion of these circumstances, the claimant agreed that none of these scenarios were applicable to him.

4. In the circumstances that he was not seeking interim relief and his claim did not fall into one of the exemptions not requiring an ACAS conciliation certificate, the Tribunal rejected his claim.
5. A claim form presented without compliance with the requirements for early conciliation will be rejected unless it falls within one of the statutory exemptions; section 18A of the Employment Tribunals Act 1996. Outside the exemption there is no discretion afforded to an employment judge as the requirement for ACAS conciliation is absolute and strict (see **Cranwell v Cullen UKEATPAS/0046/14/SM**).

### Costs

6. The Respondent made an application for costs on the basis that the interim relief application had been misconceived; did not fall into any of the protected categories that allowed a Claimant to make an application; there was no ACAS conciliation certificate and the Employment Tribunal should have rejected the claim form.
7. Mr. Roberts stated he did not understand what interim relief was; he was unaware he required two years service to make a claim for unfair dismissal and he had merely logged onto the government website and followed through the various steps to submit his claim.
8. Pursuant to Rule 76 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, the Tribunal may make a costs order and shall consider whether to do so where it considers a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of proceedings or the way that the proceedings have been concluded. Rule 78 provides the legal foundation for detailed assessment by an Employment Judge. It states the costs order may be made in a specified amount not exceeding £20,000 or it may be made for the whole or specified part of the costs of the receiving party; those costs to be subject to a detailed assessment either by an Employment Judge or by a Judge sitting in the Civil Courts. Rule 84 relates to ability to pay and provides  
“In deciding whether to make a costs order, and if so in what amount, the Tribunal may have regard to the paying party’s ability to pay...”
9. Mrs. Justice Simpler stated in **Haydar v Pennine Acute NHS Trust (UKEAT/0141/17/BA)** *“the words of the Rules are clear and require no gloss as the Court of Appeal has emphasised. They make clear (as is common ground) that there is in effect a three stage process to awarding costs. The first stage – stage one- is to ask whether the trigger for making a cost order has been established either because a party or his representative has behaved unreasonably, abusively, disruptively or vexatiously in bringing or conducting the proceedings or part of them or because the claim has no reasonable*

*prospects of success. The trigger if it is satisfied is a necessary but not sufficient condition for an award of costs. Simply because the costs jurisdiction is engaged does not mean that costs will automatically follow. This is because at the second stage- stage two-the tribunal must consider whether to exercise its discretion to make an award of costs. The discretion is broad and unfettered. The third stage-stage three-only arises if the tribunal decides to exercise its discretion to make an award of costs to be ordered in accordance with Rule 78. Ability to pay may be considered both at stage two exercise of discretion and at stage three when determining the amount of costs that should be paid”.*

10. I do not find that the Claimant has acted unreasonably in all of the circumstances. I take into account the fact that the Claimant is a litigant in person, that in ticking the box “my claim..” as set out above on the claim form he was indicating he claimed his dismissal was unfair, he was unaware of the term “interim relief” or its meaning and simply followed the steps on the website to complete his claim form and the Tribunal had not contacted him to seek clarification of his precise claim or the exemptions from having an ACAS conciliation that he relied upon.
11. Alternatively, even if it is considered that there was unreasonable conduct on behalf of the Claimant, the Tribunal does not consider it appropriate to exercise its discretion (which is broad and unfettered) to make an award of costs in circumstances where the Claimant is a litigant in person, unfamiliar with legal terminology such as interim relief; had not intended to make such an application and the Tribunal had not clarified the basis of his application.
12. The application for costs is rejected.

**Employment Judge Wedderspoon**

Date 7 November 2019