EMPLOYMENT TRIBUNALS

Claimant: **Mrs J Blankley**

Respondent: **Boots UK Limited**

Heard at: **Lincoln** **On:** **Wednesday 30 October 2019**

Before: **Employment Judge Blackwell (sitting alone)**

Representatives
Claimant: **Mr Powell of Counsel**
Respondent: **Ms S Bowen, Counsel**

JUDGMENT

The decision of the Employment Tribunal Judge is that:-

1. The Claimant's claim form submitted on 28 May 2019 is rejected pursuant to rules 10 and 12 of the first schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 because it omits an accurate early conciliation number.

REASONS

1. Mr Powell represented Mrs Blankley and gave oral submissions. Ms Bowen represented the Respondents and she relied upon both written and oral submissions.

2. It was agreed that the issue I should determine was that which was set out in the Respondent's solicitor's application to the Tribunal of 14 October. That e-mail set out the following matters:

> "Background
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> In order to assist the Tribunal in understanding the background to this matter we have set out a brief chronology of the relevant events below:-
>
> 1. The Claimant's effective date of termination ("EDT") was 11 February 2019.
>
> 2. The Claimant started the ACAS early conciliation ("EC") process on 26 March against Boots the chemist (the incorrect respondent – the correct respondent should have been Boots Management Services Limited.

3. This EC process ended on 17 April 2019 when ACAS issued the EC certificate.

4. The ET1 deadline was 1 June 2019.

5. The day before the Claimant issued her ET1 in the Tribunal she started a second EC process, this time against Boots UK Limited again the incorrect Respondent. This EC process started and ended on 28 May 2019 when ACAS issued a further EC certificate in the name of Boots UK Limited.

6. The Claimant issued her ET1 claim in the Tribunal on 28 May 2019. It was the second EC certificate number dated 28 May 2019 and against Boots UK Limited which the Claimant quoted on her ET1."

3. These facts are agreed. The application went on as follows:

"The Respondent submits that the Claimant's ET1 is invalid because it utilises a second EC certificate number opposed to the first one. Accordingly the Respondent respectfully makes an application to the Tribunal that it rejects the Claimant's claim and returns the claim form to the Claimant in accordance with rule 12 of the ET rules."

4. The relevant statute law is firstly section 18A of the Employment Tribunals Act 1996 and in particular subsection 8:-

"(8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4)."

Rules 10 and 12 of the first schedule of the Employment Tribunals Regulations 2013 are also pertinent:

"Rule 10:-

(1) The Tribunal shall reject a claim if:-

(a) it is not made on a prescribed form; or

(b) it does not contain all of the following information:-

(i) each claimant's name;
(ii) each claimant's address;
(iii) each respondent's name;
(iv) each respondent's address.

(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."

In relation to rule 12 it is common ground that the claims advanced by Mrs Blankley are not within the exemptions referred to in subparagraph 1(d) of rule 12:

"Rule 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; or

(b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process.

(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) or (b) of paragraph (1).

(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."

5. Ms Bowen also drew my attention to two authorities the first being the **Commissioner for HM Revenue and Customs v Mr M Serra Garau** [2017] UK EAT/0348/16/LA and **E.on Control Solutions Limited v Ms S Caspall** UK EAT/0003/19JOJ. It is common ground that these are the relevant authorities to determine the issue before me.

6. Insofar as the parties submissions are concerned Ms Bowen says that the EC processes and certificates ie the first and second certificates related to the same matter for the purposes of section 18(a). I agree that that is so. She went on to submit that in accordance with the **Serra Garau** case the second certificate could have no effect. Secondly that given that it could have no effect the claim form should have contained reference to the first certificate number and because it did not the ET1 omits material information under rule 12(1)(c) and accordingly ought to be rejected.

7. Mr Powell submitted that to reject the claim form under rule 12 would produce an injustice. I agree that it does. I accept that Mrs Blankley and her adviser Ms Smith have acted scrupulously and fairly throughout the process. Their concern was obviously that they should correctly name the Respondent. As it turns out through no fault of their own they still have not done so. Mr Powell goes on to say that the effect of rejecting the claim form will mean that a meretricious claim will not advance to a merits hearing.

Conclusions

8. Looking first at the Serra Garau case the issue was once again the question of whether a second EC certificate has any effect Mr Justice Kerr came to the clear conclusion that it did not. He referred to the case of **Compass Group UK and Ireland Limited v Morgan** [2017] ICR at page 73 and identified the issue as follows:

> "The issue before me in this appeal is whether more than one certificate can be issued by ACAS under the statutory procedures and what effect if any a second such certificate has on the running time for limitation purposes."

9. He concluded in paragraphs 18, 20, 21, 24 and 25 in summary that the second certificate was a nullity and was of no effect. The second relevant authority, the **E.on** case, the headnote reads as follows:

> "The Claimant's claims fail to include an accurate ACAS EC number and were thus of a kind described as rule 12(1)(c) ET rules. Pursuant to rule 12(2) the Employment Judge was therefore required to reject the claims and return the claims to the Claimant. That was a mandatory requirement that was not limited to a particular stage of the proceedings. As this would mean that there was no longer a claim before the Employment Tribunal, the Employment Judge had no power to allow the Claimant to amend. The correct procedure was instead that laid down by rule 13. The Claimant argued that the Employment Tribunal's decision could be upheld by virtue of rule 6 read together with the overriding objective. Rule 6 could not however import a discretion into a mandatory rule, see **Cranwell and Cowen and Baisley v South Lancashire Council**. Moreover rule 6 applied to Employment Tribunal proceedings but the mandatory rejection and return of the claim under rule 12 meant that there were no proceedings before the Employment Tribunal."

10. In **E.on** the Claimant submitted no less than four claims but it was the fourth claim that is on the facts the closest to the circumstances before me. Her honour Judge Eady at paragraphs 40 and 41 referred to the authority of **Stirling v United Learning Trust** UK EAT/0439/14. In that case it was held that:

> "Where the rule requires an EC number to be set out it is implicit that the number is an accurate number."

11. Again that appears to be common ground between the parties in this case. At paragraph 41 in the EAT went on to note that once the Employment Tribunal had found the claim did not include an accurate EC number it was obliged to reject it. Again although **Stirling** was concerned with rule 10 of the Employment Tribunal rules the effect of rule 12 was the same although an Employment Judge might allow that a claim should not be rejected where there was an minor error of a kind prescribed in rule 12(1)(e) or (f) and it would not be in the interests of justice for it to be rejected.

12. However it is clear from the authorities that an inaccurate EC number save for, for example a minor typographical error is not a minor error which can be dealt with under rule 12(1)(e) or (f).

13. Paragraph 45 of the **E.on** judgment describes what ought to have happened in the **E.on** case as follows:

> "In the present case had either of the claims in issue (the first or fourth claim being considered by the Employment Tribunal) been rejected for failure to provide an accurate EC number the Employment Tribunal would have required to notify the Claimant of that fact and explain how he might apply for reconsideration of the rejection."

14. Judge Eady went on to explain in paragraphs 47 onwards that there was no discretion on the part of the Tribunal because rules 10 and 12 are mandatory.

15. In accordance with the **Serra** case the second certificate is of no effect. It therefore follows that the claim form submitted by Mrs Blankley does not contain a reference to an accurate EC and that applying the ratio from **E.on** that claim form must be rejected because it omits and accurate reference to an EC certificate. Again in accordance with **E.on** I have no discretion in the matter and I am obliged to follow that course of action.

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Employment Judge Blackwell

Date: 21 November 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE