



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

**Respondent**

Mr James Nash

**AND**

ISS Facility Services Limited

**EMPLOYMENT JUDGE** Mr N W Beard (Sitting Alone)

**HELD AT** Carmarthen **ON** 18 November 2019

## JUDGMENT

**The judgment of the tribunal is that:**

1. The claimant's claim form was presented on 29 January 2015 outside the time limit set out in section 111(2) of the Employment Rights Act 1996.
2. It was reasonably practicable for the claimant to present his claim within the time limit set out in section 111(2) of the Employment Rights Act 1996, and the tribunal has no jurisdiction to hear his claim.

## REASONS

### Preliminaries

1. This hearing required me to consider whether the claimant's claim had been presented in accordance with the requirements for presenting a claim to the tribunal. The respondent contends that the tribunal has no jurisdiction to hear the claimant's complaints because he failed to include an ACAS certificate number on his ET1 application. The respondent also contends that the claim is out of time, it has not been necessary for me to address that argument.
2. I have made this decision on the basis of the documents provided, but I have accepted the claimant's contention that he is a lay person and that he had difficulty navigating the procedural requirements for presenting a claim.

## The Facts

3. On 22 June 2019 the claimant presented an ET1 claim form contending that he had been unfairly dismissed and that the respondent owed him holiday pay and overtime payments (unlawful deduction of wages claims).
  - 3.1. The claimant had commenced the early conciliation process by contacting ACAS on 17 June 2019. However, the ACAS certificate demonstrates that the process was not concluded until 24 June 2019.
  - 3.2. At section 2.3 of the ET1 form the claimant does not include an ACAS certificate number but also ticked the box to indicate that he did not have the number because ACAS did not have the power to conciliate on some or all of his claim.
  - 3.3. The claimant was unfamiliar with the legal procedural requirements of presenting a claim and as he did not have a number when completing the form simply ticked a box to move on.
  - 3.4. The claimant's claim of unfair dismissal was rejected by the tribunal on the grounds that the claimant had insufficient service. However, the claimant's other claims were not immediately rejected for failing to provide a certificate number.

## The Law

4. Section 18A of the **Employment Tribunals Act 1996**. So far as relevant, that provides:

*“(1) Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.*
5. The Employment Tribunals Act 1996 section 18A(1) places a requirement on the claimant to contact ACAS prior to commencing relevant proceedings. Section 18(1)(b) of the same Act indicates that claims made under section 23 of the Employment Rights Act 1996 (unlawful deduction of wages) are relevant proceedings for the purposes of section 18A. In addition section 18A(4) indicates that if certain conditions are met ACAS will issue a certificate. Section 18A(8) provides:

*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).*

The effect of those provisions, taken together, is to remove jurisdiction from the tribunal for a claim against any respondent for whom there is no certificate. In **Cranwell v Cullen UKEATPAS/0046/14** the Employment Appeal Tribunal held that there was no discretionary element within the rule.

Under Rule 10 of the Employment Tribunal Rules 2013 provision is made for rejection of a claim. In paragraph (1), it provides in mandatory terms that an ET:

- “10.- ... shall reject a claim if-*  
*(a). it is not made on a prescribed form;*  
*(b). ...*  
*[(c). it does not contain all of the following information-*  
*(i). an early conciliation number;*

Finally Rule 12. Provides:

- (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). one which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies;*  
*(d). one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;*  
*(e). one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates; or*  
*(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 to which the early conciliation number relates]; (a)*  
*(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). 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-paragraph (e) or (f) of paragraph (1) 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 interests of justice to reject the claim.] (b)*

*(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.*

## **Analysis**

6. The claim form did not have the relevant number, in fact it was presented before conciliation had been concluded. I accept what the claimant has said about his limited understanding but I am bound by authority and have no discretion in these matters.
  - 6.1. The claimant was required to provide a conciliation certificate number but had not done so. Conciliation was entered into and a certificate obtained but the substantive defect was the absence of a certificate number on the claim form. Indeed, there could be no such number as the claim form was presented before the conclusion of conciliation.
  - 6.2. The claim was not rejected as it ought to have been on presentation. This is unfortunate and should not have happened. However, the response pointed out the jurisdictional issue and the claimant could have attempted to rectify matters at that stage.
  - 6.3. The form did not contain a conciliation number however it did include a reference to another element of rule 10(1)(c) an exemption. That information on exemption was clearly incorrect; the claimant was required to comply with early conciliation.
  - 6.4. Based on those findings I have no option but to reject the claimant's claim at this stage on the grounds that the tribunal has no jurisdiction to hear the claim it not having been presented in accordance with Rules 10 and 12 of the Employment Tribunal Rules of Procedure 2013.

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Employment Judge W Beard  
**Date: 19 November 2019**

Judgment sent to Parties on 20 November 2019

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