



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Todde

**Respondent:** Educated Body

**Heard at:** London South Employment Tribunal      **On:** 30 January 2020

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

## Representation

**Claimant:** Mr M Raffell (employment litigator)

**Respondent:** Mr J Williams (counsel)

# JUDGMENT

## It is the judgment of the Tribunal that:

1. The claim is rejected pursuant to Rules 12(1)(c) and 12(2) of the Employment Tribunals Rules of Procedure.
2. The requirement in Rule 12(3) to return the claim form to the Claimant with a notice of rejection is dispensed with.

# REASONS

1. This preliminary hearing was listed to consider the Respondent's argument in its Grounds of Resistance that the claim should have been rejected under Rules 10(1)(c), 12(2) and 12(1)(c) of the Employment Tribunals Rules of Procedure because the claim form did not contain a valid Early Conciliation ("EC") number.
2. The claim form was presented on 7 August 2019. It named the Respondent as "Eduated Body" but this is obviously a typographical error so has been corrected to "Educated Body". In response to the question "Do you have an Acas early conciliation number?", the Claimant ticked "No". He also ticked the exemption box, "My claim consists only of a complaint of unfair dismissal which contains an application for interim relief". The claim does not consist of a claim for unfair dismissal; it is a claim of disability discrimination and discrimination

on religious grounds. In the “Additional Information” section, the Claimant wrote: “My Acas case number: T6FX – 76FF”.

3. On 8 August 2019, the Claimant emailed the Tribunal in the following terms:

“I forgot to add my acas reference number to my claim. I spoke to a Staff member who said if i email my reference number then it will be added to my case. My name is Simon todde and I submitted my case yesterday. Please let me know if there is anything else you will require.”
4. The email attached an EC certificate with the reference R527179/19/47, naming the Prospective Respondent as “RCH Educated body”. The certificate stated that EC had commenced on 31 July 2019 and the certificate was issued on 7 August 2019.
5. The claim form was referred to an Employment Judge pursuant to Rule 12(1)(f) because the name of the Respondent was not the same as on the EC certificate. It was also noted that the Claimant had not included an EC number on the claim form, but attached an EC certificate to an email. The Judge gave instructions for the claim to be accepted, presumably on the basis that the difference in the Respondent’s name was a “minor error”, and accepting that a valid EC number had been provided.
6. The claim form and the EC certificate with reference number R527179/19/47 were served on the Respondent. As noted above, the Respondent raised the absence of the EC number on the claim form in its Grounds of Resistance.
7. At today’s hearing, the Claimant produced two further EC certificates naming himself and the Respondent as the prospective parties:
  - 7.1. One which stated EC had commenced on 2 August 2019 and the certificate was issued on the same day. This certificate has no reference number.
  - 7.2. One which stated EC had commenced on 2 August and the certificate was issued on 6 August 2019, with reference number R528090/19/93.
8. It was also noted that the Claimant had, on 24 January 2020, presented a new claim form, in identical terms to the present claim and giving the EC number as R528090/19/93. That claim had been referred to a Judge because it made reference to the present claim, but not yet considered.
9. The Claimant had prepared a witness statement for today’s hearing which said he had been sent two certificates (the one with no reference number and the one with reference R528090/19/93). When he lodged his claim on 7 August 2019 he looked at the one with no reference number, noted the absence of a reference number and therefore ticked the box for “No” on the claim form when asked if he had one. He said he had only realised the problem when the Respondent raised it.
10. Although the Respondent had been sent a copy of the EC certificate with reference R527179/19/47 with the claim form, neither of the representatives at

today's hearing was aware that the Claimant had sent this certificate by email on 8 August 2019. Copies of the email were provided to the parties.

11. Having considered that correspondence, Mr Raffell said the position was as follows. The Claimant contacted ACAS on three separate occasions, by phone on 31 July 2019, by phone on 2 August 2019 and online on 2 August 2019. It appeared that each contact had generated a new EC process. The first EC certificate the Claimant received was the one with no reference number, on 2 August 2019. The second was the one with reference R528090/19/93 on 6 August 2019. The third was the one with reference R527179/19/47 on 7 August 2019.
12. It was not in dispute that, pursuant to HM Revenue & Customs v Serra Garau [2017] ICR 1121, there could only be one effective EC certificate. Nor was it disputed that, since Rule 8 of the Early Conciliation Rules of Procedure requires an EC certificate to contain "the unique reference number given by ACAS", the first certificate was not a valid certificate. It was agreed, therefore, that the only valid certificate in respect of the claim the Claimant wished to bring was the one with reference **R528090/19/93**.
13. The claim form did not give this EC number and nor has it been provided by the Claimant at any stage until today's hearing (although it was included in the claim form presented on 24 January 2020).
14. On the face of it, the claim must be rejected under Rules 12(1)(c) and 12(2) of the Employment Tribunals Rules of Procedure:
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  - (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—
    - ...
    - (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;
    - ....
  - (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).
15. The Claimant argued that the claim could nevertheless be accepted, either by waiving or varying the requirement to provide the EC number, pursuant to Rule 6, or because the Claimant did in fact comply because he accurately answered the question "Do you have an Acas early conciliation certificate number?"
16. I do not accept either argument. The Rule 6 argument was firmly rejected in E.ON Control Solutions Ltd v Caspall UKEAT/0003/19. As to the Claimant's answering of the question, there are at least two problems with this argument. First, the Claimant did, in fact, have a valid EC number at the time because he had received the certificate issued on 6 August 2019. Secondly, the issue is not whether he answered the question truthfully, but whether the claim falls to be rejected under Rule 12. The claim form did not contain an EC number and

even if the email of 8 August were treated as part of the claim form, the attached certificate was of no effect because the Claimant had an earlier certificate.

17. For completeness, I note that in Sterling v United Learning Trust UKEAT/0439/14, it was held that it is implicit in the requirement to provide the EC number that it must be an accurate number. It must also follow that a “confirmation that one of the early conciliation exemptions applies” must be a correct confirmation. The provision of the incorrect number in the Additional Information section and the incorrect ticking of the exemption box therefore cannot assist the Claimant either.
18. The claim must therefore be rejected under Rule 12(2). This is somewhat regrettable in circumstances where there is no dispute that the Claimant complied with the requirement to engage in EC and he had a valid certificate before presenting the claim, and the failure to provide the correct EC number appears to have arisen, at least in part, because he was provided with three separate certificates. It is, however, what the Rules require (as confirmed in E.ON).
19. It was agreed that there would be no point in the Tribunal returning the claim form pursuant to Rule 12(3) in order for the Claimant to rectify the defect because he has already presented a valid claim form, in identical terms, with the correct EC number. That claim is out of time, but all of the above background is bound to be relevant to a decision under s.123 of the Equality Act 2010 whether to extend time on “just and equitable” grounds. I therefore indicated that I would give instructions for the new claim to be accepted and served and for an open preliminary hearing to be listed on the time limits/ jurisdiction issue. The Tribunal may issue further directions following the Rule 26 consideration, but if not the parties are expected to liaise in order to ensure that all relevant documents and evidence, including witness evidence, are exchanged in good time before the hearing.

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Employment Judge **Ferguson**

Date: 30 January 2020