



EMPLOYMENT TRIBUNALS

Claimant **Ms M Paradisgarten**

Respondent **Intrust Advisory Ltd**

Employment Judge Elliott on 7 April 2020

ORDER ON RECONSIDERATION

The claimant's application to reconsider the decision to reject her claims against the second and third respondents is refused.

REASONS

1. This is an application made by the claimant to reconsider a decision to reject the claims against the second and third respondents, Company Governance Ltd and Webster Promotions Ltd because the Early Conciliation Certificate numbers were incorrect. The claim against the first respondent, Intrust Advisory Ltd was accepted. The decision was communicated to the claimant's solicitors by letter dated 28 October 2019.
2. On 30 October 2019 the claimant's solicitors applied under Rule 70 of the Employment Tribunal Rules of Procedure 2013 for a Reconsideration of the decision to reject. This was on the grounds that the completion of the incorrect number was human error or in the alternative "*I submit an amended claim with the correct early conciliation numbers and apply for an extension of time to allow this claim out of time*".
3. The claimant's solicitor relied upon the decision of the EAT in **Adams v British Telecommunications plc EAT 0342/15** which confirmed that the failure to add the correct Early Conciliation number results in a rejection but it allowed an appeal to extend time for the claims of unfair dismissal and race discrimination in the circumstances of that case. More is said on this below.
4. The claimant said that there was no prejudice to the respondent in relation to their application. It was said that the claimant would be prejudiced as she would be denied the claims as a result of a minor error on the part of her solicitor.

5. The claim is for unfair dismissal, holiday pay and unlawful deductions from wages and the claims were brought against the 3 companies; the claimant stating that they were all associated companies of the Intrust Group.
6. The Particulars of Claim stated that the claimant began employment with the first respondent on 3 May 2005, and began employment with the proposed second respondent in June 2012 and at the time of her dismissal she was employed as a nominal director. The Particulars stated that the claimant was employed by another company from 3 May 2005 and in November 2018 this employment was transferred to the proposed third respondent.
7. It appears that what was attached to the solicitor's email of 30 October 2019 sent at 16:40 hours were EC certificates for the second and third respondents, and an amended claim with corrected EC numbers. It was sent to the London Central email address for correspondence: LondonCentralET@hmcts.gsi.gov.uk.
8. It appears that this email was not brought to a Judge's attention. On 26 February 2020 claimant solicitors chased up the application. On my instructions a letter was sent to the claimant and the one respondent against whom the claim was properly presented, namely Intrust Advisory Ltd, stating that the claims against the second and third respondents had been rejected and that this could not be corrected by amendment. The tribunal was told in the 26 February 2020 email that the respondent had no objection to the application.
9. In a letter dated 11 March 2020 the tribunal drew the attention of the claimant's solicitor to the decision of the EAT in ***E.ON Control Solutions Ltd v Caspall EAT/0003/19*** and said that the claims against the second and third respondents were rejected and the error could not be corrected by amendment or consent.
10. On 12 March 2020 the claimant solicitors applied for a review of the decision. This was treated as a reconsideration application under Rule 70. There was a short delay in dealing with this application due to the current pandemic.
11. The claimant stated in the email of 12 March 2020 that they took no issue with the decision to reject. The claimant's solicitor said that it was not clear whether the application to extend time had also been considered and again relied upon the decision of the EAT in ***Adams v British Communications plc*** (above) and also relied upon ***North East London NHS Foundation trust v Zhou EAT/0003/19***.

The relevant law

12. The decision of the EAT in ***E.ON Control Solutions Ltd v Caspall EAT/0003/19*** holds that under Rule 12 a claim has to be rejected if there is an incorrect EC number.
13. In ***Adams v British Telecommunications plc 2017 ICR 382*** the EAT held that it was not reasonably practicable for the claimant to present her second claim in time. She presented the second claim two days late, but she acted promptly and on the same day that she was notified of the defect. On the

time point the EAT accepted that the claimant was labouring under a misunderstanding about the correctness of her first claim at all times until she presented her second claim. The EAT took the view that her misunderstanding was genuine and reasonable in the circumstances. She succeeded both on the reasonably practicable and the just and equitable tests as this was both an unfair dismissal and a race discrimination claim.

14. **North East London NHS Foundation Trust v Zhou EAT/0066/18** was a similar case dealing only with the reasonably practicable test. The facts of the case show that the claim was re-presented with the fee as it was a case that originated in the days of the fees regime. In that case the EAT upheld the appeal because the ET had failed to engage with the **Dedman** principle (from **Dedman v British Building and Engineering Appliances Ltd 1973 IRLR 379**, where the error arose from the fault of the advisers.)
15. Under Rule 8 of the Employment Tribunal Rules of Procedure 2013 a claim shall be started by presenting a completed claim form (using a prescribed form) in accordance with any Practice Direction made under Regulation 11. Regulation 11 deals with the Practice Directions the President may make about the procedure of the tribunal. The relevant Presidential Guidance made under Regulation 11 is set out below.
16. The Employment Tribunal (England & Wales) Presidential Practice Direction on Presentation of Claims 2017 provide for 3 methods of presenting a claim to the Employment Tribunal. They are set out in paragraph 4.
 - Online by using the online form submission service provided by HMCTS accessible at www.employmenttribunals.service.gov.uk
 - by post to: Employment Tribunal Central Office (England & Wales) PO Box 10218 Leicester LE1 8EG
 - in person to an Employment Tribunal office listed in the Schedule to the Practice Direction which includes London Central Employment Tribunal in Kingsway London WC2.

Decision on Reconsideration

17. The claimant's application to reconsider the decision to reject her claims against the proposed second and third respondents is refused for the following reasons.
18. The claimant accepts in the email dated 12 March 2020 that the decision to reject the claims against the second and third respondents was correct based on the case law, this being the **E.ON Control Systems** case.
19. What was therefore pursued was an application to amend the claim and/or to grant an extension of time to allow it out of time.
20. The letter from the tribunal dated 11 March 2020 explained that based on the **E.ON** case the error could not be corrected upon amendment. The claimant's email of 12 March 2020 asked whether the application to extend time had also been considered. This is dealt with now.

21. An application to extend time can only be made within existing proceedings. Based on the **E.ON** case, there are no existing proceedings against the two companies against which the claimant wishes to proceed as the second and third respondents.
22. What is clear from the **Adams** case is that a second claim was presented in person at the London East Employment Tribunal and this was a valid means of presentation as set out in the Presidential Guidance (EAT judgment at paragraph 4 gives the relevant finding of fact). What the claimant did in that case was to validly present a second claim in relation to which the time point could be considered. The point was decided in the claimant's favour.
23. So far as the case of **Zhou** is concerned, it appeared from my reading of that case that the claim was re-presented and there was nothing to show that it was presented other than validly in a way that allowed the fee that then applied, to be accepted.
24. The reason I refuse the claimant's application in this case is because on my finding there is no validly presented second claim. There has been no second claim presented in a way which complies with one of the methods of presentation set out the Presidential Guidance set out above and therefore there has been no compliance with Rule 8. The claimant's solicitors' email of 30 October 2019 at 16:40 hours was not the presentation of a claim form under Rule 8 and as such there is no "second claim" under which to consider out of time application.
25. For these reasons the claimant's application for reconsideration is refused and the claims against the second and third respondents are rejected.
26. The claim continues against the first respondent and the first day of the full merits hearing on **Tuesday 19 May 2020** is converted to a telephone case management hearing at **10am for 90 minutes**. The second and third days are vacated (20 and 21 May 2020).

Dated: 7 April 2020

Employment Judge Elliott

ORDER SENT TO THE PARTIES ON

07/04/2020.

.....
FOR THE TRIBUNAL OFFICE