



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Schwartzel

Respondent: GMB Union

RECORD OF A PRELIMINARY HEARING

Heard at: Cambridge

On: 3 January 2020

Before: Employment Judge Ord (sitting alone)

Appearances

For the Claimant: In person.

For the Respondent: Ms J Ball, Counsel.

JUDGMENT

1. The claim form in this case is rejected pursuant to rule 10 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 because it does not contain an early conciliation number.
2. The form shall be returned to the claimant with the notes of rejection explaining why it has been rejected which notice shall contain information about how to apply for a reconsideration of the rejection.

REASONS

1. The claimant has brought two separate sets of proceedings, these proceedings against GMB (presented to the Tribunal on 17 March 2019) and case number 3300387/2019 against XPO Supply Chain UK Limited which proceedings were commenced in January 2019.
2. In the proceedings against GMB, this case, the claimant identified an early conciliation certificate number R336401/18/55. That early conciliation certificate is dated 15 December 2018 and identifies the prospective respondent as XPO Logistics.

3. On 1 March 2019 the claimant applied to join GMB into case number 3300387/2019 as second respondent. That application was rejected by the Tribunal on 16 March 2019.
4. The following day, 17 March 2019, the claimant presented the claim form in this case, confirming that she had an early conciliation certificate and quoted the certificate number R336401/18/55 (the early conciliation certificate identifying XPO Logistics as the prospective respondent and upon which she relied when presenting her claim against that respondent). Under rule 10 of the Employment Tribunal Rules of Procedure a Tribunal must reject a claim if it does not contain an early conciliation certificate number.
5. In Sterling v United Learning Trust (UKEAT/439/14) the Employment Appeal Tribunal held that where the rule requires an early conciliation number to be set out it is implicit that that number is an accurate number.
6. Under rule 12 of the Employment Tribunal Rules of Procedure the staff of the Tribunal Office shall refer a claim to an Employment Judge if they consider that the claim or part of it may be 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.
7. Applying Sterling above, the requirement that the claim form must contain an early conciliation number means an accurate number.
8. Such a defect is not one which a Judge has the ability to consider to be a minor error as the Employment Appeal Tribunal confirmed in the case of E.ON Control Solutions v Caspall (UKEAT/003/19) where HHJ Eady confirmed that the Tribunal has no discretion to consider an error to be a minor error where the error (whether minor or otherwise) relates to the early conciliation certificate number itself.
9. The Judge went on to confirm that the obligation to reject the claim continues so that when the matter was referred (in that case as in this, as a result of an application by the respondent) the Employment Judge was obliged to reject the claims under rule 12(1)(c) because the claim did not contain an accurate early conciliation number.
10. Accordingly, the claim form in this case is rejected. It does not contain an accurate early conciliation certificate number. The claimant suggested before me today that as she has subsequently engaged in an early conciliation process involving GMB and had subsequently obtained an early conciliation certificate (that certificate is dated 1 July 2019 and bears the ACAS reference number R510639/19/12) she had “cured the defect”.
11. I reject that approach for two reasons. First, the claim form has been rejected. It cannot therefore be amended. Secondly, however, the obligation which is laid out in the Employment Tribunals Act 1996 (s.18A) requires a person, before they present an application to institute relevant proceedings before the Employment Tribunal, to provide to ACAS prescribed information and engage in

early conciliation up to a time when the conciliation officer issues a certificate to the prospective claimant.

12. There is no opportunity or permission in either the Act or rules of the Tribunal to allow an early conciliation process to be carried out retrospectively after the institution of proceedings.
13. For those reasons the claimant's claim form is rejected.

JUDGMENT ON COSTS

The claimant not being present and not represented, no order is made on the respondent's application for costs.

REASONS

1. The respondent made an application for costs on the basis that the claimant has acted unreasonably in the bringing of these proceedings.
2. In the first instance the claim has been rejected and thus there is no claim in respect of which an order can be made.
3. Additionally, however, if the costs rules applied in these circumstances whilst I was satisfied that the claim had no reasonable prospect of success, it had no such prospect because of a defect in procedure which the litigant in person failed to grasp. It would not be appropriate in the circumstances of this case therefore to make an order for costs in favour of the respondent against the claimant. The claim should have been rejected on presentation. It has been rejected on the first occasion it has come before a Judge at a hearing.

Employment Judge Ord

Date: 10 January 2020

Sent to the parties on:16.01.2020

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For the Tribunal: L Williams

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