



EMPLOYMENT TRIBUNALS

Claimant: Mr G Adamson

Respondent: Royal Mail Group Limited

UPON APPLICATION made by a letter dated 17 August 2020 to reconsider the judgment under rule 71 Employment Tribunals Rules of Procedure 2013 dated 12 July 2019, and without a hearing

JUDGMENT ON RECONSIDERATION APPLICATION

1. It is in the interests of justice to consider the reconsideration application out of time.
2. It is in the interests of justice to revoke the decision, dated 12 July 2019, to reject the claim against Royal Mail Group Limited only because the claimant had not gone through the early conciliation procedure with ACAS and failed to provide an early conciliation number.
3. The claim is accepted from 20 August 2019, which is the date when the Employment Appeal Tribunal first received a copy of the ACAS early Conciliation certificate.

REASONS

1. The claimant's application, dated 17 August and received at the Employment Tribunal on 19 August 2020, for reconsideration of my decision to reject his claim arises out of a rule 3(7) Employment Appeal Tribunal ("EAT") Rules 1993 letter sent to the claimant on 6 August 2020, at the behest of His Honour Judge Auerbach. Judge Auerbach helpfully sets out the background to this case in the said letter.
2. The claimant presented a claim to the Employment Tribunal ("ET") on 3 July 2019. He identified the respondents as Royal Mail Group and Mr Bolton. I rejected the claim because it did not provide an ACAS early conciliation number and no exemption applied. As set out above, that was communicated to the claimant in a letter dated 12 July 2019.
3. The claimant then contacted ACAS and obtained evidence of that, by way of an email of 14 July 2019, including a reference number. He then, on 15 July 2019, applied to the tribunal for a reconsideration of the rejection.

4. By a further email of 1 August 2019, the Tribunal informed the claimant that the reconsideration was rejected because the ACAS reference number was not a valid ACAS EC certificate number, and such a number was required for each proposed respondent.
5. At the EAT, the claimant clarified that he is not in fact seeking to pursue a separate claim against Mr Bolton, and also referred to his letter of 15 July in that regard.
6. The proposed appeal before the EAT was against my decision of 12 July 2019. Judge Auerbach concluded that such appeal was not arguable. The Tribunal was right to reject the claim because an ACAS EC certificate number was required and none had, at that point, been provided. Though the claimant clarified that he was not seeking to claim separately against Mr Bolton, that was still required in respect of Royal Mail Group.
7. Although the proposed appeal was not against the refusal of a reconsideration on 1 August 2019, Judge Auerbach also commented that this decision also appeared to have been correct as the claimant had still not provided an ACAS EC certificate number for Royal Mail Group at that point. That number is not the ACAS reference number issued when first contact is made, but the number on the certificate issued by ACAS when the early conciliation process formally ends, which is not identical. That certificate, and that number, were only issued on 14 August 2019.
8. Although the claimant sent a copy of that certificate to the EAT which was attached to his notice of appeal on 20 August 2019, the claimant did not send it at the time to the ET. He also did not make a further reconsideration application to the tribunal, relying on that certificate and its number.
9. Judge Auerbach noted that it would be open to the claimant to make a further reconsideration application to the Employment Tribunal out of time, relying on that certificate and its number.
10. Hence, this application for a further reconsideration, out of time, of my decision to reject the claim on 12 July 2019.
11. The ET received this reconsideration application, dated 17 August 2020, on 19 August 2020.
12. In addition to attaching the letter from the EAT, dated 6 August 2020, and the ACAS early conciliation certificate, dated 14 July 2019 until 14 August 2019, the claimant indicated that he no longer wishes to claim against the second respondent.
13. No reason was, at that time, given for the lateness of the application, although it can be readily inferred that it came about directly as a result of the letter from the EAT dated 6 August 2020. Further, the claimant initially applied for a reconsideration on 15 July 2019 which was rejected on 1 August 2019.

Relevant law

14. A claimant will not normally be allowed to bring a claim in an ET unless he has informed ACAS of the complaint, thereby giving ACAS the opportunity to try to resolve the case by 'early conciliation' (EC).
15. The EC scheme is set out in Ss.18A and 18B of the Employment Tribunals Act 1996 (ETA), and in the Early Conciliation Rules of Procedure ('the EC Rules') contained in the Schedule to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 SI 2014/254 ('the EC Regulations').
16. If either party does not wish to engage in conciliation, or if settlement is not reached within the applicable timeframe, or if the ACAS conciliator considers that it will not be possible to settle the claim, then the conciliator will issue an EC certificate as evidence that S.18A(1) ETA has been complied with — S.18A(4) ETA/rule 7 EC Rules.
17. This certificate is vital where the claimant wishes to proceed with his claim, as he cannot start proceedings without it in any case to which the EC requirement applies — S.18A(8).
18. The certificate bears a unique reference number — rule 8(d). This number must be marked on the claimant's claim form when completed to avoid the claim being rejected under rule 10 of the Tribunal Rules.
19. Rules 10 and 12 of the Tribunal Rules (as amended by the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2014 SI 2014/271) set out certain 'technical' and 'substantive' grounds on which a claim (or part of a claim) will be rejected.
20. They include: when an Employment Judge considers that the claim, or part of it, institutes 'relevant proceedings' — i.e. proceedings that would normally be subject to ACAS conciliation, as in this case because it is a claim of unfair dismissal — but the form contains neither an EC number nor confirmation that one of the EC exemptions applies; or the form confirms that one of the EC exemptions applies but it does not — rule 12(1)(c)-(d).
21. If a claim, or part of it, is rejected for a technical defect under rule 10 of the Tribunal Rules, or a 'substantive' defect under rule 12, a claimant may apply for a 'reconsideration' of the decision under rule 13.
22. The grounds for any reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
23. If the application is not refused on paper the tribunal will send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the parties' views on whether the application can be determined without a hearing — rule 72(1). The notice may also 'set out the judge's provisional views on the application. The matter will then proceed to a hearing, unless the employment judge considers — having regard to any response to the application — that a hearing is 'not necessary in the interests of justice' — rule 72(2). If the reconsideration proceeds without a hearing, the

parties shall be given a reasonable opportunity to make further written representations — rule 72(2).

24. The application must meet the following procedural requirements, set out in rule 13(2):
 - i. it must be in writing
 - ii. it must either explain why the decision is said to have been wrong or rectify the defect
 - iii. it must be presented to the tribunal within 14 days of the date on which the notice of rejection was sent, and
 - iv. if the claimant wishes to request a hearing, this must be stated in the application.
25. Where the judge decides that the original rejection was correct but that a defect has been corrected, the claim shall be treated as presented 'on the date that the defect was rectified' — rule 13(4).
26. **Provisional view:** In accordance with rule 72, notice was sent out to the parties with a provisional view on 4 September 2020.
27. The provisional view was that it is in the interests of justice to revoke the decision to reject the claim against Royal Mail Group Ltd and accept the claim against that respondent only. However, the claim should be accepted as of 20 August 2019 at which point the EAT first received a copy of the ACAS Early Conciliation Certificate.
28. **Comments provided:** The parties were requested to set out their comments in writing, if they had any, within 14 days from the date this letter was sent to them. The parties were also asked to say whether they agree that the application can be dealt with on paper.
29. Both parties agreed that the application should be dealt with on paper.
30. The claimant provided an explanation for the delay in his application. In an email, dated 17 September 2020, the claimant explained that the delay came about as a result of the lengthy appeal process in the EAT.
31. The respondent, among other things, pointed out that:
 - a. There was a delay of over a month, after the claim was first rejected on 12 July 2019, before the claimant obtained a valid EC certificate
 - b. In obtaining the said EC certificate the claimant must have been aware that it was a prerequisite for him to progress his claim
 - c. Rather than seek a further application for reconsideration the claimant sent the said certificate to the EAT
 - d. the respondent is potentially prejudiced because it may face a claim relating to a decision which occurred some considerable time ago

Decision on reconsideration application

32. The first matter to consider is whether to permit the application for consideration to proceed out of time. As set out above, the tribunal received this application, dated 17 August 2020, on 19 August 2020. Rule 71 provides

that an application shall be presented in writing within 14 days of the date on which the written record of the original decision was sent to the parties. Rule 5 provides that the Tribunal may extend any time limit specified in the Rules. The claimant initially applied for reconsideration on 15 July 2019 which was rejected on 1 August 2019. Instead of reapplying for reconsideration the claimant appealed to the EAT. That was clearly an error on the claimant's part, as pointed out by Judge Auerbach. However, it indicates that the claimant was engaging in the process, even if he did so incorrectly. The rules and the application of the rules are complicated and can be confusing. Eventually, as a result of information provided by Judge Auerbach, the claimant found his way back to the ET. In these circumstances, I consider that it is in the interests of justice and in accordance with the overriding objective to consider the application for reconsideration out of time.

33. Turning to the substantive application, the reason for the initial rejection of the claim has now been remedied. In other words, the claimant has now obtained a relevant ACAS early conciliation number and certificate. Although, as the respondent points out, the certificate and number were not obtained until the claim was issued there would be little point in insisting claimant issue a further claim form.
34. Because the claimant has now obtained the necessary certificate and number, I consider that it is in the interests of justice to accept the claim. As I have said, the law and rules are complicated, even for lawyers. The claimant is a litigant in person. The respondent was put on notice of the claim, both by the initial rejection and also when the EC process commenced on 14 July 2019, very shortly after the claim was rejected.
35. However, the claim should be accepted only from 20 August 2019, at which point the EAT first received a copy of the ACAS early conciliation certificate. This is when I consider that the defect to have been rectified. Although the certificate was sent to the EAT, rather than the ET, the EAT had all the relevant documents by this time.
36. Once the response is received the claim will be listed for a preliminary hearing to determine whether or not the Tribunal has jurisdiction to consider the claim out of time.

Regional Employment Judge Pirani

29 September 2020