



EMPLOYMENT TRIBUNALS

Claimant
Mr D Butti

v

Respondent
Kier Limited

Heard at: Watford **On:** 10 July, 28 July, 25 September, 2 October 2020
Before: Employment Judge Smail

Appearances

For the Claimant: Mr C Kennedy, Counsel

For the Respondent: Mr C Kelly, Counsel

RECONSIDERATION JUDGMENT

1. The respondent's application for a reconsideration of the reasons following the preliminary hearing on 25 September 2020 is dismissed.

REASONS

2. The respondent's solicitors wish me to, in effect, withdraw criticism of the respondent for failing to bring to the Employment Judge's notice, at the hearing on 27 January 2020, that there was an Acas early conciliation certificate, dated 23 June 2019, which was, in fact, a valid certificate for the claim 3319915/2019 presented on 1 July 2019.
3. I do not withdraw the points made in the reasons. I am not blaming anyone in particular nor am I alleging professional misconduct. I do make the point that it is clear that the employment judge was not made aware of that Acas certificate. The relevance of the certificate is that it could have founded an application for a reconsideration of the rejection he made on that occasion. Admittedly it would have led to a different deemed date of presentation but the issue of reasonable practicability and time limits could have been aired on that occasion rather than it having to be aired before me in the course of the convoluted preliminary hearings we have had.
4. A judge needs to know the full picture. The respondent can say rightly that the claimant and his representative did not alert the judge to the matter but neither did they. It is obvious to me from the reading of the judgment that

the judge would have been interested to know of the existence of that certificate. He was labouring under the false impression that there was no valid certificate.

5. The attention to detail in this case has been found wanting elsewhere. Let me quote from Mr Kelly's skeleton argument, dated 11 September 2020, prepared for the hearing on 25 September 2020. He says at paragraph 7:

Since the last preliminary hearing on 28 July 2020 there have been "two significant evidential developments as a result of the respondent examining its records". First the respondent was in possession of what was thought to be the earliest Acas certificate dated 23 June 2019 in advance of the hearing before Judge Palmer. However, Counsel for the respondent at the hearing was not aware of the existence of that certificate. Secondly the respondent has located a copy of an earlier certificate dated 4 April 2019. The matter to which the certificate related was solely unlawful deduction from wages. At the last preliminary hearing the claimant referred to the notification which led to the certificate being issued but stated that he had never received a certificate from his union representative. The circumstances in which the respondent came to possess this certificate, but failed to mention its existence in the context of these proceedings, is addressed in the supplementary witness statement of Ms Hettle".

6. At paragraph 10 Mr Kelly informs me that following examination of the respondent's records, it has become apparent that the respondent received the certificate dated 23 June 2019 on 14 November 2019 as part of the papers supplied by the claimant in respect of the second claim. That pre-dated the 27 January 2020 hearing.

7. He goes on at paragraph 13:

"Counsel for the respondent at the hearing on 27 January 2020 has confirmed that she was unaware of the existence of any certificate which pre-dated the first claim".

8. At paragraph 14 of his skeleton argument Mr Kelly writes:

"Nevertheless, this is an error for which the respondent apologises to the tribunal and the claimant."

9. I am fully aware that the respondent has the point that the claimant and his representatives did not themselves make the position clear on the certificate. However, it does seem to me, as I observed in my reasons in support of my judgment following the preliminary hearing on 25 September 2020, that the respondent has contributed to the state of confusion. The attention to detail was unsatisfactory. The tribunal should have known the full picture earlier than it did.

10. I leave it at that.

Employment Judge Smail

Date:5 November 2020.....

Sent to the parties on: 6 November 20

For the Tribunal Office