



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Cretan

Respondent: Mr A Al-Chalabi

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: London South Employment Tribunal (by video conference)

On: 27 October 2020

Before: Employment Judge Kelly (sitting alone)

Appearances

For the claimant: In person

For the respondent: Mr Gillie of counsel

JUDGEMENT

The respondent's application to strike out the claims is dismissed.

REASONS

1. The respondent applied to strike out the claim for want of jurisdiction because the name on the ACAS early conciliation certificate was 'Kings College London' of 5 Cutcombe Road, London and the name of the respondent on the claim form was 'Ammar Al-Chalabi', of 5 Cutcombe Road, London, an individual. When the claim form had been presented to the Tribunal, it had been accepted and the name 'Kings College London' substituted as the respondent for the name 'Ammar Al-Chalabi'. It was the respondent's understanding that, in breach of rule 12, the claim form had not been referred to an Employment Judge for a decision before this happened.
2. We investigated what had happened with the Tribunal office. A clerk had referred the matter to an Employment Judge stating 'the claimant has advised that the correct respondent is the one on the ACAS cert. May we accept this and proceed?' There was a reference to an email, presumably from the claimant with

this information. EJ Siddoll had responded with a written instruction 'Please accept as against Kings College London (KCL) as per E C certificate'. It was therefore clear that, in compliance with rule 12 of Employment Tribunal Rules of Procedure, the issue had been referred to an employment judge who had made a decision whether to accept the claim.

3. The respondent submitted, which we accept, that this decision falls within rule 1(3)(b)(ii) and so is a judgement which can be reconsidered. The respondent applied for such reconsideration under rule 70.
4. As it was not practicable for EJ Siddoll to reconsider the judgement, she not being present at this hearing, the Regional Employment Judge appointed EJ Kelly to deal with the application.
5. Moving to the substantive application:
6. Under rule 12(2A) the claim shall be rejected if the Judge considers that the claim is as described in para (f) of rule 12(1) unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim.
7. Para (f) refers to a claim where the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate.
8. We considered the cases of *Giny v SNA Transport Ltd EAT 0317/16* and *Chard v Trowbridge Office Cleaning Services Ltd UKEAT/0254/16/DM*, with the emphasis on the latter case.
9. The respondent made submissions, as per its written submissions presented, and the claimant gave an explanation and made submissions. The claimant had had prior sight of the respondent's submissions with the reference to *Giny* and the respondent supplied to the tribunal and the claimant a link to *Chard* which all were able to access. Both parties and the tribunal had access to a bundle from the claimant and a bundle from the respondent.
10. In the case of *Chard*, the EAT overturned the decision of the employment tribunal not to accept the claim when the claimant named a controlling shareholder and director of her employer on the ACAS certificate and named the employer company on the claim form. The EAT made the following comments.
 - 10.1. The EAT accepted that the question of whether there was a 'minor error' is one of fact and judgement for the tribunal. The words are ordinary English words. It is incorrect that naming an individual rather than the relevant company can never be minor. The overriding objective should be emphasised in considering issues of this kind which includes dealing with matters fairly and justly and avoiding unnecessary formality and seeking flexibility in proceedings. The need is to avoid the injustice that can result from undue formality and rigidity in the proceedings. This includes the need to avoid elevating form over substance in procedural matters, especially where parties are unrepresented.

To a non lawyer, the distinction between a company and its controlling shareholder can be attenuated almost to vanishing point.

- 10.2. The EAT emphasised that the individual named was the controlling shareholder of the company and also a director; a director may have little control and no shareholding.
 - 10.3. It also stated that the 'interests of justice' part of the rule is a useful pointer to what sort of errors should be considered minor. Minor errors are ones that are likely to be such that it will not be in the interests of justice to reject the claim on the strength of them. The question of whether errors are minor is a question of fact and degree.
 - 10.4. The EAT considered that there were no factor pointing against it being a minor error such as an additional substantial shareholder or a different place of business.
 - 10.5. It also stated that an error will often be minor if it causes no prejudice to the other side beyond the defeat of what would otherwise be a windfall limitation defence.
11. In the case before us, the respondent submitted that, in *Chard*, it was material that there was a close link between the person and the corporate entity. However, Mr Al-Chalabi was merely a professor and member of the academic staff of KCL and he was neither a member of the senior management team nor a head of department. There were other individuals in KCL senior to Mr Al-Chalabi who had controlling management of KCL. KCL also had a different head office from the address on the certificate, the address on the certificate being the place of work of Mr Al-Chalabi. There was therefore a significant difference between KCL and Mr Al-Chalabi. This was born out by the fact that there was not a single factual allegation against Mr Al-Chalabi on the claim form. The respondent therefore argued that the claim should have been rejected.
 12. The claimant said that she gave Mr Al-Chalabi's name and address on the claim form because he is Head of Department and there was no manager more senior to him. She pointed to the fact that his address and signature were on the letter dismissing her, and that it was solely his decision and under his authority. She considered that he was the only person authorised to respond to her claim. She said she understood that she was employed by Mr Al-Chalabi. She said that she started her complaint via ACAS with the generic employer of KCL and then provided the name of the person who would respond to the claim, Mr Al-Chalabi. She stated that her contract of employment stated that her employer was Mr Al-Chalabi and that, within the institution, there was a new employer for each job, even though it was all part of KCL, the employer being the head of department. She said that Mr Al-Chalabi had the authority over everything under his remit and there was no-one more senior to him. She said she had named him as an authority and not as a person.
 13. The respondent replied that the claimant was not employed by Mr Al-Chalabi, and it was not credible to suggest that there was no-one else whom the claimant could not have named on the claim form as a contact at KCL. It referred the tribunal to

the KCL website which explained its structure and which the claimant could have accessed, and that she must have had access to wider KCL departments such as HR. The dismissal letter stated that it was the College which had decided to terminate the claimant's employment.

Conclusions

14. The name of the respondent on the claim form was not the same as the name of the prospective respondent on the ACAS early conciliation certificate. Therefore, under rule 12(2A), the claim should have been rejected, unless the Judge considered that the claimant made a minor error in relation to the name and it would not be in the interests of justice to reject the claim.
15. By comparison with *Chard*, we note that Mr Al-Chalabi's relationship with KCL is not as close as that of the controlling shareholder and director was to Trowbridge Office Cleaning Services. In the absence of anyone attending the hearing from KCL (IE only its barrister attended), we accept the submissions from the claimant that Mr Al-Chalabi was a head of department. However, this is by no means as close a relationship to KCL as an owner and its most senior management. Therefore, if we were to look at the facts of *Chard*, one might conclude that there was insufficient link between Mr Al-Chalabi and KCL to find that the claimant had made merely a minor error.
16. However, we consider that we need to take account of the comments of the EAT in *Chard* that the 'interests of justice' part of the rule is a useful pointer to what sort of errors should be considered minor. Minor errors are ones that are likely to be such that it will not be in the interests of justice to reject the claim on the strength of them. An error will often be minor if it causes no prejudice to the other side beyond the defeat of what would otherwise be a windfall limitation defence.
17. The claimant is an unrepresented party who appears to have formed a real link in her mind between Mr Al-Chalabi and KCL to the extent that she saw Mr Al-Chalabi as the authority behind her employment and her de facto employer. While professionals and, presumably ACAS when they drew up their certificate, may see it as obvious that the claimant's employer must be KCL, this was not apparently at all clear to the claimant, who was anxious to put on the claim form the name of the person she considered was authorised to respond to her claim.
18. We consider that to strike out the claim would lead to just the sort of injustice which the EAT in *Chard* warned against, injustice that can result from undue formality and rigidity in the proceedings. The claimant would potentially be prejudiced by a strike out to the extent that it would be impossible for her to pursue her claim at all. We consider that this would cause great injustice to the claimant as an unrepresented party who was not seeing the question of who her employer was in the same way that a professional would do. The claimant's error may well be classed as minor because it would not be in the interests of justice to reject the claim on the strength of it. Further, the error causes no prejudice to the respondent (nor the likely future respondent, KCL) beyond the defeat of what would otherwise be a windfall limitation defence. Both the respondent and KCL have known from receipt of the claim that they were potentially facing a claim from the claimant.

19. Therefore, we consider it correct that EJ Siddoll accepted the claim and we will not reconsider this decision. The respondent's application to strike out the claim is dismissed. For the sake of good order, we note that we do reconsider EJ Siddoll's decision to the extent that that decision substituted KCL as respondent. The respondent remains Mr Al-Chalabi unless and until there is a further order on that issue.

Employment Judge Kelly

Signed on: 29 October 2020