



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr E Morris-Jones

v

**Thomas Cook UK Travel Ltd (in
compulsory liquidation) and
Alix Partners UK LLP**

Heard at: Cambridge (by telephone)

On: 8 January 2021

Before: Regional Employment Judge Foxwell

Appearances

For the Claimant: In person

For the Respondent: No Attendance

JUDGMENT ON RECONSIDERATION

1. The decision to reject the claim against Thomas Cook UK Travel Limited is revoked on reconsideration and the claim is accepted.
2. The decision to reject the claim against Alix Partners UK LLP is confirmed.
3. The proceedings are stayed because Thomas Cook UK Travel Limited is in compulsory liquidation.

REASONS

1. This is an application for reconsideration of the decision to reject the claimant's complaint seeking a protective award under the Trade Union and Labour Relations (Consolidation) Act 1992. The background to the application is as follows.
2. The claimant, Mr Edward Morris-Jones, was employed by Thomas Cook UK Travel Limited (the respondent) as an HR Business Partner from 5 November 1997.
3. This company went into compulsory liquidation on 23 September 2019.

4. On 8 October 2019 the claimant presented his complaint to the Tribunal. Under provisions in the Insolvency Act 1986 a party cannot commence or continue legal proceedings against a company in compulsory liquidation without the permission of the High Court. The claimant had not obtained that permission. It was not clear on the face of the claim form that the respondent was in compulsory liquidation at that time.
5. The prescribed claim form contains at section 2.3 a space for a claimant to insert details of ACAS early conciliation or to specify whether one of the exemptions to it applies. The claimant did not provide an early conciliation certificate number, rather he ticked the box which says, “ACAS does not have the power to conciliate on some or all of my claim”.
6. For reasons which I cannot explain but for which I have apologised to the claimant, his claim was not referred to a Judge for some months. I saw it on 28 February 2020 when I directed that the claim should be rejected as the proceedings were relevant proceedings within Section 18A of the Employment Tribunals Act 1996 so that ACAS had power to conciliate and an early conciliation certificate was required.
7. This instruction resulted in the Tribunal’s administration writing to the claimant on 4 March 2020 informing him that his claim had been rejected.
8. The claimant appealed against this decision to the Employment Appeal Tribunal. While I am not privy to the papers lodged with the EAT, it appears that the appeal was correctly instituted as there is nothing to suggest that it was rejected.
9. The claimant has told me, and I accept, that he included with the appeal papers a copy of an ACAS early conciliation certificate which he had received in October 2019. The certificate number is R582044/19/89 and the dates of first notification and issue are said to be 8 October and 23 October 2019. In other words, early conciliation commenced on the day that the claimant presented his claim and ended 2 weeks later.
10. On 15 September 2020 the Employment Appeal Tribunal issued an Order informing the claimant that his appeal had been stayed for a period of 2 months to enable him to make an application under Rule 13 of the Tribunal’s Rules of Procedure 2013 for reconsideration of the decision to reject his claim. The application was to include a request for an extension of time because, ordinarily, such applications must be made within 14 days of a claim being rejected for non-compliance with the early conciliation provisions.
11. Following receipt of that Order and having discussed the matter with one of the administrative staff in the Tribunal’s Watford office, on 2 October 2020 the claimant made an application by email for reconsideration under Rule 13.
12. For reasons for which I again cannot explain, this application was not referred to a Judge promptly and was only brought to my attention when, on

12 December 2020, a chasing email was sent by the EAT itself. When I learned of the delay I directed that a hearing take place in front of me as soon as possible and that is what has occurred today.

13. Shortly before this hearing, correspondence was received from the liquidators of the respondent pointing out the compulsory moratorium on proceedings. As the claimant's application relates to the administrative step of acceptance however, and as acceptance can have a bearing on time limits, which are short in the Employment Tribunal, I decided that this hearing should proceed but on the basis that, were the decision to reject reconsidered and the claim accepted, it would then be stayed immediately. I excused the respondent's attendance (I doubt I could have required this in any case).
14. While this hearing was listed to take place as a public hearing by CVP, unfortunately there were technical issues so I ended up dealing with the matter by telephone with the claimant. No-one else attempted to join the hearing.
15. On the basis of the information provided in the claim form, I am satisfied that this claim was correctly rejected. A claim for a protective award is relevant proceedings under Section 18A of the Employment Tribunals Act 1996 as noted above. The requirement to contact ACAS to, at the very least, obtain an early conciliation certificate applies to relevant proceedings.
16. The classes of case exempt from this requirement are set out in regulation 3 of the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014. None of the exceptions apply here. While many other claimants have launched claims for a protective award against the respondent, for the claimant to have the benefit of their early conciliation certificates he would have had to have been named on the same claim form as one or more of them. He is, however, the sole claimant in this claim. There is no evidence that the respondent had contacted ACAS in connection with these proceedings nor does the claim form assert other claims which are not relevant proceedings. This is not a type of claim for which interim relief can be sought and the other limited exceptions (which relate in essence to claims against the State) do not apply.
17. That said, I am satisfied that the claimant had obtained an early conciliation certificate by 23 October 2019 and had this matter been dealt with promptly at that time there is every reason to believe that the claim could have been corrected so as to have been accepted administratively from that date.
18. I have power under rule 13(4) of the Tribunal's Rules to treat a claim as presented on the date when a relevant defect was rectified. I exercise that power in this case and direct that the claim should be treated as correctly presented as at 23 October 2019. Accordingly, I revoke the decision to reject the claim against the respondent and it shall be accepted as if presented on 23 October 2019.

19. I confirm the decision to reject the claim against Alix Partners UK LLP, the liquidators of the respondent. They were not the subject of the early conciliation process, were not the claimant's employers and do not have any conceivable liability in Employment Tribunal proceedings for a protective award.
20. For the sake of completeness, I am satisfied that it is appropriate to extend time under rule 13 given the unfortunate chronology which I have set out in detail above as the bulk of any delay has been caused by the Tribunal's administration.
21. For those reasons therefore, the claim shall be treated as correctly constituted administratively on 23 October 2019.
22. As explained above, however, it is subject to an automatic stay which takes effect immediately. I have asked the Tribunal's administration to write to the claimant separately to explain this and the fact that in due course he will be asked why the claim should not be struck out if permission to proceed with it has not been obtained from the High Court.

Regional Employment Judge Foxwell

Date: 11 January 2021.....
11/01/2021

Sent to the parties on:
J Moossavi

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For the Tribunal Office