EMPLOYMENT TRIBUNALS

Claimant: Mr N Lewis

Respondent: Creativevents Limited

Heard at: London Central (via CVP) **On:** 10th June 2021

Before: Employment Judge Nicklin

Representation

Claimant: Mr M Hallen (Solicitor)

Respondent: Mr P Olszewski (Solicitor)

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video, conducted using Cloud Video Platform (CVP). It was not practicable to hold a face to face hearing because of the COVID-19 pandemic.

RESERVED JUDGMENT ON A PRELIMINARY HEARING

1. The tribunal has jurisdiction to hear both claims.

2. 'Creative Events Limited' shall be substituted as Respondent with 'Creativevents Limited' in both claims (case numbers 2200088/2021 and 2206882/2020). Re-service on 'Creativevents Limited' is dispensed with.

3. The Respondent's application dated 20th April 2021 to dismiss the claims on procedural and jurisdictional grounds is dismissed.

REASONS

Introduction

1. This is the reserved judgment on the Respondent's application to dismiss the claims brought under both case numbers on procedural and jurisdictional grounds. The application was heard as a preliminary issue (pursuant to Rule

53(1)(b) of the tribunal's Rules of Procedure) over the course of a day on 10th June 2021. I heard sworn oral evidence from the Claimant, who was cross examined by Mr Olszewski, and oral submissions from both parties which supplemented written submissions filed in advance.

2. The written application was set out in a letter dated 20th April 2021 and sought two forms of relief:

> *a) The Claimant's claims issued under claim numbers: 2206882/2020 and 2200088/2021 be dismissed under Rule 27 as the Tribunal does not have the jurisdiction to consider them.*
> *b) The Claimant be estopped from issuing future proceedings against the Employer, limitation having already expired in relation to any claim he may have against the Employer.*

There was also a third paragraph concerning an application for costs, but the parties agreed at the end of the hearing that any such application, if it is to be made, will await the outcome of this judgment.

3. As is set out in detail below, the Respondent's argument is that the Claimant has issued two sets of proceedings against the wrong entity, a company which was not his employer. It says there are substantive defects on the ACAS certificates and claim forms for both claims because of the incorrect name and incorrect addresses for service. It contends that proceedings have not been brought against the Claimant's employer and the Claimant is now out of time to do so. It is argued that the tribunal does not, therefore, have jurisdiction to entertain the claims and they should accordingly be dismissed. Any substitution of the incorrectly named Respondent with the correctly named employer is opposed by the Respondent.

4. Following a case management order I made at a previous hearing on 13th May 2021, I was provided with an agreed hearing bundle running to 139 pages, which included the Claimant's witness statement dated 30th May 2021.

Procedural history

5. By a claim form presented on 26th October 2020 (case number 2206882/2020 – "the first claim"), the Claimant brought claims of unfair dismissal, notice pay and a claim for a redundancy payment. By a subsequent claim form presented on 8th January 2021 (case number 2200088/2021 – "the second claim"), the Claimant brought a claim for a redundancy payment. Both claims were brought against 'Creative Events Limited' (which, for the purposes of this judgment will be named "Creative Events" throughout).

6. The Claimant was employed from 1st July 2010 until a date which is in dispute in 2020 (31st July or 4th September 2020) by 'Creativevents Limited' (which, for the purposes of this judgment will be called "the Respondent"). The Respondent is a catering company offering contract catering to businesses and organisations.

7. Creative Events is a wholly distinct company from the Respondent. It is a photography company registered in Lancashire. The Claimant has nothing to do with this company and it is agreed that it was not his employer.

8. The first claim provided the address for Creative Events as 'Earls Court Exhibition Centre, Warwick Road, London, SW5 9TA'. This matched the ACAS certificate for the first claim, which was issued on 23rd October 2020.

9. The second claim provided the address for Creative Events as 'Olympia Exhibition Centre, Olympia Exhibition Centre, London, W14 8UX'. The ACAS certificate for the second claim, issued on 7th January 2021, gave the address as 'Olympia Exhibition Centre, Hammersmith Road, London, W14 8UX'. The claim form repeated the venue in the box where the street was meant to be named.

10. At a case management hearing on 22nd March 2021 before Employment Judge Brown, Mr Hallen attended on behalf of the Claimant. There was no attendance or representation by the Respondent (or Creative Events). It was established that the address given in the first claim was incorrect. In respect of the second claim, it was explained by Mr Hallen at that hearing that the form generated by the tribunal system omitted the street name and he had written to the tribunal pointing this out with the full address. The two claims were joined to be heard together because they involved the same parties and arose out of the same facts. Re-service was ordered at: Creative Events Limited, Olympia Exhibition Centre, Hammersmith Road, W14 8UX.

11. The correct London address for the Respondent is: Olympia London, Hammersmith Road, Kensington, W14 8UX (see p.106 of the bundle).

12. The Respondent accepts it received the second claim form upon service but disputes that this was good service. On 20th April 2021, the Respondent filed an ET3 for the second claim with Grounds of Resistance responding to both claims, raising the jurisdictional argument which is the substance of its application. The parties then came before me on 13th May 2021 for a hearing which had been listed originally as a short full merits hearing in the second claim. That hearing was converted into a case management hearing with directions given to this preliminary hearing. During a discussion at that hearing about the application, I indicated to the parties that the tribunal also has a discretion under Rule 34 of the tribunal's Rules of Procedure to substitute a party. Both parties have addressed this issue within their submissions at the preliminary hearing.

Findings of fact

13. The Claimant worked as a driver for the Respondent, delivering catering and event equipment to venues around the country. He says his employment terminated on 31st July 2020. I make no finding about that because the jurisdictional issues can be determined without deciding the point – it is therefore a matter for any tribunal at a full merits hearing, where necessary.

14. The Claimant accepts that the first claim (and the associated ACAS certificate) specified an incorrect address (the address had been demolished; it was given as the address because it was specified on the original contract of employment) and he accepts that his employer was the Respondent, not Creative Events (as both defined above).

15. I accept the Claimant's evidence that he generally reads the Respondent's name as two words, rather than one. I found him to be a reliable and honest witness, not prone to any exaggeration. He gave his evidence to the tribunal in a straightforward and cooperative manner.

16. As far as the Claimant is concerned, the Respondent called itself 'Creative' and I accept his evidence that he considered that his employer was called 'Creative' or, where the full name was used, 'Creative' and 'Events' were two separate words. This is because:

    16.1. The Respondent used an email style, at least until some point in 2020, ending @creative.co.uk. The Claimant's written notice of his furlough period ending, set out in a letter dated 22nd June 2020 (p.84), shows this email being adopted below the signature of Silvia Gurnari, of the Respondent (other emails show the same person signing off emails from Gather & Gather, part of CH&CO).

    16.2. An email dated 19th April 2013, concerning the provision of a copy of the Claimant's contract, has at the footer the name of three brands: 'creativevents', 'Creative Taste' and 'Creative Bars' (p.75). 'creativ' and 'events', whilst joined as one word, appear in different colours/shades. The other two brands expressly use the word 'Creative' in the singular.

    16.3. The Claimant told me, and I accept, that the uniform adopted by the Respondent used the word 'Creative', rather than 'creativevents'.

17. The Claimant carried out his own search of Companies House and realised that the company Creative Events did exist in Lancashire. He knew that was the wrong company so instructed his solicitor to issue the claim using what he thought was the Respondent's service address (although this was wrong). I find that, having learned that there was another, similar named, company, the Claimant sought to bring his claim against his employer and he plainly thought he was doing this by instructing his solicitor to issue the claim using a known address for the Respondent and not Creative Events in Lancashire (notwithstanding that the address was an old, now demolished address). The Claimant did not set out to bring his claim against Creative Events – his dispute was and is with his employer. This is supported by the fact that pre-issue correspondence was exchanged with the Respondent through its People Director at CH&CO Limited (and not with Creative Events in Lancashire).

18. As the Claimant realised that he had used an incorrect address on the first claim, he instructed his solicitor to issue a second claim on 8th January 2021. This claim was only in respect of the redundancy payment because that claim has a six-month time limit. I accept the Claimant's evidence that he brought this second claim to protect his position whilst the time limit was still running.

19. In pre-issue correspondence, the Claimant and his representative were using the name Creative Events, rather than the Respondent's correct name. Ms Hutchings, People Director, on behalf of the Respondent, did refer to 'Creativevents Ltd' in her email of 2nd September 2020 to the Claimant's solicitor (p.97). Ms Hutchings was actively engaged in the ACAS early conciliation process prior to the issue of the first claim. Clearly, ACAS managed to get in contact with the Respondent, notwithstanding the address used. However, I accept the Claimant's evidence that during this process the incorrect details supplied were not actively corrected by the Respondent, although it is not under any special duty to do so in the circumstances.

Law

Rules concerning claim forms and jurisdiction

Rule 10:

(1) The Tribunal shall reject a claim if—

(a) it is not made on a prescribed form;

(b) it does not contain all of the following information—

(i) each claimant's name;

(ii) each claimant's address;

(iii) each respondent's name;

(iv) each respondent's address [;or

(c) it does not contain one of the following—

(i) an early conciliation number;

(ii) confirmation that the claim does not institute any relevant proceedings; or

(iii) confirmation that one of the early conciliation exemptions applies.]

(2) The form shall be returned to the claimant with a notice of rejection explaining why it has been rejected. The notice shall contain information about how to apply for a reconsideration of the rejection.

Rule 12:

(1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—

(a) one which the Tribunal has no jurisdiction to consider;

(b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process;

(c) [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;

(d) one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;
[(da) one which institutes relevant proceedings and the early conciliation number on the claim form is not the same as the early conciliation number on the early conciliation certificate;]
(e) one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates; or

(f) one which institutes relevant proceedings and 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 to which the early conciliation number relates.]

(2) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraphs (a)[, (b), (c) or (d)] of paragraph (1).

[(2ZA) The claim shall be rejected if the Judge considers that the claim is of a kind described in sub-paragraph (da) of paragraph (1) unless the Judge considers that the claimant made an error in relation to an early conciliation number and it would not be in the interests of justice to reject the claim.]

[(2A) The claim, or part of it, shall be rejected if the Judge considers that the claim, or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made [an] error in relation to a name or address and it would not be in the interests of justice to reject the claim.]

(3) If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the Judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.

Rule 15:

Unless the claim is rejected, the Tribunal shall send a copy of the claim form, together with a prescribed response form, to each respondent with a notice which includes information on—

(a) whether any part of the claim has been rejected; and

(b) how to submit a response to the claim, the time limit for doing so and what will happen if a response is not received by the Tribunal within that time limit.

Rule 27:

(1) If the Employment Judge considers either that the Tribunal has no jurisdiction to consider the claim, or part of it, or that the claim, or part of it, has no reasonable prospect of success, the Tribunal shall send a notice to the parties—

(a) setting out the Judge's view and the reasons for it; and

(b) ordering that the claim, or the part in question, shall be dismissed on such date as is specified in the notice unless before that date the claimant has presented written representations to the Tribunal explaining why the claim (or part) should not be dismissed.

(2) If no such representations are received, the claim shall be dismissed from the date specified without further order (although the Tribunal shall write to the parties to confirm what has occurred).

(3) If representations are received within the specified time they shall be considered by an Employment Judge, who shall either permit the claim (or part) to proceed or fix a hearing for the purpose of deciding whether it should be permitted to do so. The respondent may, but need not, attend and participate in the hearing.

(4) If any part of the claim is permitted to proceed the Judge shall make a case management order.

Rule 91:

A Tribunal may treat any document as delivered to a person, notwithstanding any non-compliance with rules 86 to 88, if satisfied that the document in question, or its substance, has in fact come to the attention of that person.

20. Rule 2 of Schedule 5 of the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 ("the EC Rules") provides:

(1) An early conciliation form which is presented to ACAS must be—
(a) submitted using the online form on the ACAS website; or
(b) sent by post to the ACAS address set out on the early conciliation form.

(2) An early conciliation form must contain—
(a) the prospective claimant's name and address; and
(b) the prospective respondent's name and address.

The Respondent's authorities

21. The Respondent relied upon the decision of the EAT in Patel v Specsavers Optical Group Limited (unreported, 13th September 2019, UKEAT/0286/18/JOJ). This case concerned the Claimant's application to add an additional Respondent to the claim when he did not have an ACAS EC certificate for that proposed Respondent. The tribunal in that case found that the omission to name the proposed additional Respondent was not the result of a minor error. The Claimant had not confused the names of the parties; he always intended to name two Respondents but only notified ACAS about the first one. The appeal against the tribunal's decision on this point was rejected.

The Claimant's authorities

22. Campbell v Jamie Stevens (Kensington) Ltd ([2020] ICR D1; 8 July 2019 UKEAT/0097/19/JOJ). In this case, the Claimant named the hairdressing salon where she worked, giving its address. The claim was accepted and no Response was received. At a case management hearing where both parties attended, the tribunal amended the claim to re-serve it on the company. The Claimant appealed and the EAT decided that whether or not an ET1 complies with Rule 15 was a question of fact. The requirement to send the claim to 'each Respondent' must be applied consistently with the overriding objective. In the context of applying the early conciliation requirements, the EAT had previously been clear in Mist v Derby Community Health Services NHS Trust [2016] ICR 543 that undue formality was to be avoided when it came to the identification of the Respondent to proposed proceedings. Rule 15 did not require service at the registered office address of a company. When there has been an alleged failure to comply with Rule 15, what was likely to be required was a common-sense evidence-based inquiry as to what happened.

23. In Mist (cited above), HHJ Eady QC (as she then was) held that the tribunal has a general power to amend a claim before it, including adding a Respondent. That is a matter of judicial discretion. Whilst section 18A of the Employment Tribunals Act 1996 (concerning the ACAS EC process) required a Prospective Claimant to provide prescribed information to ACAS, the requirement was not for the precise or full legal title, providing ACAS had sufficient information to be able to contact the Prospective Respondent. In that case, as the error in identifying the hospital trust was minor in nature and there was no suggestion that the Claimant was intending to mislead, the tribunal was entitled to accept the certificate as conclusive of the Claimant's compliance with section 18A.

24. HHJ Eady QC said this in respect of the information provided to ACAS by the Claimant (at para 55):

> *…Early conciliation builds in an opportunity for pre-claim conciliation, but, other than the acknowledgement of that opportunity by means of the notification requirements, it does not oblige a prospective claimant to engage with the process in any substantive sense, still less does it give any rights to the prospective respondent (notably, any contact with the prospective respondent is conditional upon the claimant's consent; the respondent has no "right" to early conciliation as such). The minimal notification requirements, as I read them, are thus consistent with the general aims of early conciliation. There is no suggestion that the process was intended to set any greater threshold for a claimant before she can lodge tribunal proceedings. Indeed, the absence of the relevant information does not even result in an immediate rejection of*

the prospective claimant's notification: Acas may reject such a notification (Early Conciliation Rules, rule 2(3)), or it may contact the prospective claimant to obtain any missing information. That would suggest that, if Acas considers it has sufficient to permit it to make contact with the prospective respondent (should the claimant be amenable to that), it may equally choose not to reject the notification simply because there is a non-material error in providing the prospective respondent's name and address.

***56** In this case, Acas did not reject the claimant's first notification, and the tribunal apparently accepted the early conciliation certificate as conclusive of her compliance with the requirements of section 18A; at least, it did not reject the ET1 under rule 10(1)(c) of the Employment Tribunals Rules of Procedure 2013. Should the second respondent now be permitted to go behind that? There is no suggestion that the claimant was intending to mislead, and any error in identification of the first respondent was plainly minor in nature; it certainly gave rise to no objection by the first respondent itself. On the face of the early conciliation certificate, the information provided to Acas was sufficient for it to make contact with the first respondent. In those circumstances, I consider that the employment tribunal was entitled to treat the early conciliation certificate as conclusive in terms of the claimant's compliance with her section 18A obligations. Had it thereby erred, the first respondent might have objected when it was served with the ET1. It did not do so, apparently accepting the tribunal's decision not to reject the claim.*

***57** Even if that analysis is incorrect in any respect, the tribunal decision in issue would be the decision not to reject the claim. That is not the decision under appeal, and it is not open to the second respondent to seek to challenge it by way of this cross-appeal.*

25. In Giny v SNA Transport Ltd (unreported, 22nd May 2017, UKEAT/0317/16), the ACAS certificate had the name of the sole director of the employer on it, whereas the claim form was brought against the company (correctly named). The correct address was used in both. The tribunal rejected the claim on the basis that the error was not minor within Rule 12(2A) and this was upheld by the EAT. However, the point was made by Soole J that "*this is a classic issue for Employment Judges to determine, by application of their good sense and great experience to the evidence before them and the language of r12(2A). The first stage involves a judgment as to whether or not the difference in name or address is a "minor error". If not, the claim must be rejected. If it is a minor error, there is a further judgment to be made as to whether it would not be in the interests of justice to reject the claim*."

26. In Chard v Trowbridge Office Cleaning Services Limited (unreported, 4th July 2017, UKEAT/0254/16) the tribunal rejected a claim under Rule 12(2A) because the name of the Prospective Respondent on the certificate was given as an individual but the claim form named the company. The judge held the error was not minor. Kerr J (like Soole J above) concluded that it was wrong to say that a Respondent as an individual rather than a company could never be a minor error. Kerr J concluded that the error was minor (the individual was the managing director) and the interest of justice did not require the claim to be rejected. Kerr J referred to the 'considerable emphasis' to be placed on the overriding objective and avoiding unnecessary formality and seeking flexibility in the proceedings (as per Rule 2). In particular, this includes (at para 63 of the judgment): "*the need to avoid elevating form over substance in procedural matters, especially where parties are unrepresented*".

Other authorities

27. Rule 12(1)(f) of the tribunal's Rules of Procedure does not require tribunal staff to refer a claim to an Employment Judge if there is a defect in the address or a difference between an address in the EC certificate and the claim form (see Peacock v Murreyfield Lodge Ltd (unreported, 24th September 2019, UKEAT/0117/19/JOJ)).

Substitution of a party

28. The tribunal has a case management power to substitute a party, as set out in Rule 34 of the Employment Tribunal's Rules of Procedure 2013 (as amended) and the principles in Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650 and Selkent Bus Co Ltd v Moore [1996] ICR 836.

29. Rule 34 of the tribunal's Rules of Procedure provides:

> *The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.*

30. The procedure for consideration as to whether to add or substitute a party by way of amendment to the claim was summarised by Sir John Donaldson in *Cocking* as follows [at 656-57]:

> *1.* "[The tribunal] *should ask themselves whether the unamended originating application complied with [rule 8(1) of Schedule 1 to the 2013 Regulations]: see, in relation to home-made forms of complaint, Smith v Automobile Pty Ltd [1973] 2 All ER 1105, [1973] ICR 306.*
>
> *2. If it did not, there is no power to amend and a new originating application must be presented.*
>
> *3. If it did, the tribunal should ask themselves whether the unamended originating application was presented to the [tribunal] within the time limit appropriate to the type of claim being put forward in the amended application.*
>
> *4. If it was not the tribunal have no power to allow the proposed amendment.*
>
> *5. If it was the tribunal have a discretion whether or not to allow the amendment.*
>
> *6. In deciding whether or not to exercise their discretion to allow an amendment which will add or substitute a new party, the tribunal should only do so if they are satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause reasonable doubt as to the identity of the person intending to claim or, as the case may be, to be claimed against.*
>
> *7. In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the*

circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused."

31. The judgment in Cocking also confirmed that where the amendment is to add or substitute a Respondent (the substance of the original complaint being unamended), the issue of time limits is unaffected. The tribunal's jurisdiction to hear the complaint is based on when the Claimant originally presented the claim to the tribunal and not when the new Respondent is joined to the proceedings.

32. It was confirmed by the EAT in Drake International Services Ltd v Blue Arrow Ltd [2016] ICR 445, that where the tribunal exercises its discretion to amend the Respondent to the claim, the claim is not invalidated because the early conciliation process undertaken named the original Respondents.

Submissions from the parties

33. I do not set out all of the parties' submissions in these written reasons. However, I have considered the written and oral submissions of both parties in detail, including all of the authorities cited and provided.

34. The Respondent made the following primary submissions (in writing and orally):

    34.1. There are substantive defects on the ACAS certificate and ET1 in the first claim. The address was not the correct address for either the Respondent or Creative Events on the ACAS certificate or the ET1. The ACAS EC certificate must contain the Prospective Respondent's name and address under Rule 2(2) of the EC Rules. The name and address is not correct and the ET1 should have been rejected under Rule 12. Alternatively, if the Claimant has correctly named Creative Events, the claim should proceed against that entity and the Respondent has no interest in the proceedings.

    34.2. There are substantive defects on the ACAS certificate and ET1 in the second claim. These are substantially the same points as made regarding the first claim. The Respondent says that the address on the second claim and ACAS certificate is wrong, despite this being different to what was provided on the first claim.

    34.3. The Claimant has issued the claims against a different legal entity which was not his employer and, alternatively, there has been a lack of due diligence on the part of the Claimant's solicitor to issue the claim correctly;

    34.4. Both claims were defectively served. The Respondent relies on the Civil Procedure Rules (CPR r6.9(2)) to say that the claim should be served at the principal office of the company or any place of business of the company within the jurisdiction which has a real connection with the claim. It is said that the first claim was not correctly served owing to the incorrect address. The second claim was received by 'chance occurrence' due to Olympia London being a famous London landmark. The address on claim form does not meet the CPR test and service is therefore bad or non-compliant.

    34.5. Both claims are now time barred against the Respondent. The Respondent says that the first claim was incorrectly served and therefore is out of time against the Respondent, despite being

presented to the tribunal within time. The Respondent says that the second claim is out of time because it was brought against Creative Events and not the Respondent.

34.6. The issuing of two sets of proceedings is an abuse of process in an attempt to circumvent the need to make any application for substitution or issue out of time.

34.7. It would be unjust and unequitable to allow the claims to proceed; and

34.8. The Claimant will not be prejudiced because he can seek compensation for loss of a chance against his solicitor.

35. The Claimant made the following primary submissions (in writing and orally):

35.1. The first claim specified the incorrect name of the Claimant's employer and address. The two names are similar and it is an honest mistake. Any error was minor which does not unduly prejudice the Respondent.

35.2. The Respondent engaged in the initial ACAS process for the first claim and it did not mention the error.

35.3. The claims are meritorious and should be allowed to proceed. The Claimant alleges that he was dismissed on 31st July 2020 because he had been told his furlough period was coming to an end and there was no work for him as a driver. The Claimant says he was dismissed unfairly (there is a dispute between the parties as to whether he was dismissed at this point or whether, as the Respondent alleges, the Claimant resigned under notice with effect from 4th September 2020).

35.4. The tribunal should substitute the name of Creative Events with that of the Respondent under Rule 34. The mistakes were genuine mistakes, were not misleading and would not cause reasonable doubt as to the identity of the person to be claimed against.

35.5. The Respondent's application looks to form and not substance and this is not consistent with the EAT authorities.

Discussion and conclusions

The first claim - defects

36. Whether the Claimant's effective date of termination was 31st July or 4th September 2020, the first claim was presented to the tribunal within the applicable time limits for the complaints. Presenting the claim on 26th October 2020 was within time even without factoring in the adjustments to time running by virtue of the ACAS Early Conciliation process.

37. Both the ACAS certificate and ET1 claim form are incorrect as to the Respondent's name. The Respondent is the employer and the only entity against which, in my judgment, the Claimant ever intended to bring a claim to the tribunal. Much emphasis has been placed on Creative Events, registered in Lancashire, but the Claimant has no interest in that company before the tribunal. The fact he has used addresses which are or have been associated with his former employer is clear evidence of his intentions.

38. Whilst I have been referred to Rule 12 (in respect of the rejection of a claim form for substantive defects) this rule is not applicable, in my judgment, because, in respect of the first claim, the name and address of the Respondent on the ACAS certificate matches the ET1 claim form. This does not, therefore, engage Rule 12(1)(f) and, unsurprisingly, the claim form was accepted.

39. The Respondent contends that the ACAS certificate is defective for want of a

correct name and address. However, Rule 2(2) of the EC Rules simply requires that the notification must contain the Prospective Respondent's name and address. As observed by HHJ Eady QC in Mist, it is open to ACAS to reject the notification or contact the Prospective Claimant for missing information. It plainly did not need to do this in this case because the Respondent was engaged in the ACAS process, as the Claimant explained in his witness statement. The notification was not rejected and a certificate was issued, which was accepted by the tribunal upon presentation of the claim. Similar to the analysis reached by HHJ Eady QC (at para 57 of her judgment), the decision to be challenged in this situation would be the decision not to reject the claim form. Whilst the Respondent contends that the claim form should have been rejected, the application before me is founded on whether the tribunal has jurisdiction to hear the claim. In my judgment, even if there had been a challenge to a previous decision to accept, that would not have succeeded given there was no basis under the rules for the tribunal to have rejected the claim on procedural grounds based on the ACAS certificate.

40. As to the argument regarding service of the first claim, the fact that the address for the Respondent was incorrect on the ET1 does not mean the proceedings are in some way automatically ineffective or void. This was remedied by the order of Employment Judge Brown on 22nd March 2021 when she joined the claims and ordered re-service. The Respondent's application dated 20th April 2021 raises its positive case about the first claim. Accordingly, it had by this point received the first claim form, to which it has then provided substantive Grounds of Resistance.

41. I must apply the overriding objective when considering the application of Rule 15 and service of the claim. The tribunal has already sought to deal with the first claim fairly and justly by ensuring that re-service took place. In my judgment and having regard to the guidance in Campbell, the re-service address is a proper trading address of the Respondent, at which the proceedings could (and did) come to its attention. As explained below, there is little, if any, practical distinction between the name Olympia London or Olympia Exhibition Centre when the claim is otherwise being sent to the same address and post code.

The second claim - defects

42. The presentation of the second claim on 8th January 2021 was also in time in respect of a redundancy payment complaint, running from either alleged termination date.

43. As above, the name of the Respondent is incorrect on both the ACAS certificate and claim form. The address was not, in my judgment, incorrect as a trading address of the Respondent. Insofar as there is a discrepancy between Olympia London and Olympia Exhibition Centre, it is, in my judgment and as above, very minor and of no real practical consequence. Insofar as it is said that the claim form repeats the Exhibition Centre line instead of providing the name of the street, this, again, is a minor error which, in any event, arose through no fault of the Claimant.

44. As to the operation of Rule 12, there is a minor difference between the address specified on the ACAS certificate and the claim form. However, the EAT in Peacock made clear that Rule 12(1)(f) concerns only the name of the Respondent and not the address. It is not a matter which tribunal staff must

refer to an Employment Judge. Rule 12(2A) refers to the judge (where a claim is so referred) considering whether the Claimant made an error in relation to a name or address and it would not be in the interests of justice to reject the claim. Accordingly, notwithstanding the principle established in Peacock, had I needed to do so, I would have concluded that the error was minor in any event and, further, it was clearly not in the interests of justice to reject the claim form simply because the street name was missing from the Olympia Exhibition Centre address.

45. Despite the points taken, the Respondent accepts it received the claim form through service at this address. Whilst the Respondent placed emphasis on this being merely good fortune, Rule 91 plainly operates in this situation. The claim form was received and came to the attention of the Respondent. It instructed solicitors who have then participated in the proceedings. There is no prejudice to the Respondent from any alleged defects in this address, at all.

46. It follows that there is no substance to the argument raised as to defective service of the second claim. The claim form was served and received by the Respondent.

Conclusions on the two claims

47. I conclude that there is no basis to find that the tribunal does not have jurisdiction to hear the claims in respect of the points taken as to the ACAS EC certificates and the claim forms. I have had regard to the overriding objective and, in particular, the need to deal with the case fairly and justly, including the need to avoid unnecessary formality whilst seeking flexibility in the proceedings.

48. The real matter of substance is the fact that the two claim forms bring the claim, erroneously, against Creative Events, a different entity to the Respondent, which is the Claimant's employer. This name was used on both ACAS notifications and both claim forms. As such, the claims are not procedurally defective and would not have been rejected for any name discrepancies between those documents.

The name of the Respondent

49. The Respondent's argument is that proceedings have been brought against Creative Events and the Claimant is now out of time to present a claim against his real employer. In my judgment, to accept that argument the tribunal would be elevating form well above substance in a manner which is wholly incompatible with the overriding objective.

50. Rule 34 of the tribunal's Rules of Procedure is engaged in this situation. The tribunal has the power to substitute Creative Events with the Respondent and can do so of its own motion or upon the application of a party. I conclude that it is entirely in accordance with the overriding objective to substitute Creative Events with the Respondent which is the company against which the Claimant intended to bring its complaints. I have had regard to the principles in Cocking and Selkent and apply those principles as follows:

    50.1. The unamended claims comply with Rule 8(1). The claims were originated using the ET1 claim forms.

    50.2. The unamended claim forms were both, as set out above, presented

to the tribunal within the time limits applicable to the complaints.

50.3. The mistake made by the Claimant was a genuine mistake, founded upon his understanding of the name of his employer generally as 'Creative' and his honestly held view of the name being two words, not one.

50.4. Whilst it was argued that his solicitor should or could have carried out further due diligence and some pre-issue correspondence from the Respondent used the correct name, I conclude that there was still a genuine mistake on the part of the Claimant, in circumstance where the distinction between the two names is minor. That distinction is the additional 'e' in Creative Events, set out as two words. It is important not to be distracted by the effect of this distinction (i.e. to name a different company) when the Claimant's purpose and intention was to initiate proceedings against his employer. He had given instructions for two claims to be brought against Creative Events and this accorded with his understanding of his employer's name. His belief was reinforced by the fact that an active ACAS Early Conciliation process was able to take place with the Respondent, in respect of the first claim, despite having cited Creative Events and an old trading address.

50.5. In my judgment, the name stated was not misleading or, in all the circumstances, such as to cause reasonable doubt as to the identity of the company intending to be claimed against. As I have found, the Claimant intended to bring proceedings against his employer and that is supported by the pre-issue correspondence; the ACAS process and the addresses used (which, in any case, were not addresses for Creative Events). There is no evidence to suggest that the Respondent, in the initial ACAS process for the first claim, was confused by the Claimant's actions or believed that he was bringing a claim against a photography company in Lancashire.

50.6. Having regard to the relative injustice or hardship of not amending the proceedings to substitute Creative Events with the Respondent, the Claimant will suffer far greater prejudice and hardship than the Respondent by not being able to pursue his claims. Considering all of the circumstances, I conclude that the claims have sufficient merit to be determined at a full merits hearing (though I make no findings about the substantive matters in dispute which are for such an occasion). There is a live issue as to whether the Claimant was dismissed or whether he resigned and, if dismissed, whether the Respondent complied with its obligations in respect of any redundancy. To pronounce that the formulation of the Respondent's name means his claims are now dismissed (in these circumstances where there has been a genuine mistake which was not misleading) would mean that the Claimant has no claims against his employer. This would result in an injustice which cannot fairly be remedied, in the context of this case, by saying he can embark on other litigation against his representative.

50.7. Conversely, there is minimal, if any, prejudice or injustice to the Respondent in it proceeding to defend the claims. There was some delay caused by the re-service of the claims. However, the full merits

hearing to determine the claims was originally listed for the 10th and 11th June 2021. That listing was converted into a one-day hearing for this preliminary issue to be determined upon the Respondent's application. The claim would otherwise have been disposed of on that occasion (subject to any other unforeseen issues). The claims can be listed as soon as reasonably possible hereafter – no further re-service is required - and the Respondent has already prepared its substantive defence to the claims.

50.8. Having regard to the overriding objective, I conclude that the case is dealt with fairly and justly in all the circumstances by substituting Creative Events with the Respondent – 'Creativevents Limited'.

Limitation in respect of the Respondent

51. As to the limitation point, substitution does not engage any time limit or ACAS Early Conciliation compliance issues in this case, in accordance with Cocking and Drake. The tribunal has jurisdiction to determine the complaints which are as originally presented and were brought in time.

Abuse of process

52. I reject the Respondent's submission that the there is an abuse of process in respect of the two claims. The claims have already been joined by the tribunal so that the issues raised can be considered and heard together. That order has not been appealed or set aside. In any event, the second claim was issued protectively given the concern about the address used on the first claim. The Respondent has set out its Grounds of Resistance in one pleading and will not face duplication of process in the circumstances.

Unjust and unequitable

53. It follows that it is not unjust or unequitable for the claims to proceed for the reasons set out above.

Outcome

54. The application is therefore dismissed. Creative Events Limited will be substituted with 'Creativevents Limited' as the Respondent to both claims. The tribunal has jurisdiction to entertain the claims and will proceed to hear them together, as joined, at a hearing to be listed in a separate case management order.

Employment Judge Nicklin

Date: 8th July 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

08/07/2021.

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FOR THE TRIBUNAL OFFICE