



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Platts

**Respondent:** Baker & Baker Products UK Limited

**Heard at:** Liverpool (by video hearing)

**On:** 26 July 2021

**Before:** Employment Judge Buzzard (sitting alone)

## REPRESENTATION:

**Claimant:** Ms M Kponou (Solicitor)

**Respondent:** Mr J Hassells (Solicitor)

**JUDGMENT** having been sent to the parties on 10 August 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### The Issue

1. This preliminary hearing was listed to determine if the claimant's claim had been presented in time.
2. Since this claim was presented, and potentially causing future confusion, the name of the respondent has been changed. The respondent company is now called "*Baker & Baker Products UK Limited*". To avoid any confusion, as this name change post dated all the relevant events for this decision, the reasons below refer to the respondent by its then correct name "*CSM (United Kingdom) Ltd*" only.

### Agreed Relevant Factual Background

3. There was no factual dispute between the parties that was of relevance to the determination of the disputed issue at this hearing.

4. The claimant claims unfair dismissal and wrongful dismissal. The claimant employment with the respondent ended on 11 February 2020. Following his dismissal, the claimant commenced early conciliation and was issued with a certificate. For the purposes of these reasons that EC certificate is referred to a Certificate 1.

5. Certificate 1 does not state it relates to the respondent. It was issued against a similar sounding but non-existent organisation. The two names in question were “*CSM United Kingdom Wirral & Manchester*” and “*CSM (United Kingdom) Limited*”.

6. Certificate 1, naming the prospective respondent as “*CSM United Kingdom Wirral & Manchester*” states conciliation commenced on 19 March 2020 and ended on 8 April 2020. The limitation period for a claim of unfair dismissal relying on this certificate would run to 30 May 2020.

7. The claimant, on receiving advice, identified that Certificate 1 did not correctly identify the prospective respondent. On 7 May 2020 the claimant commenced further early conciliation. This resulted in an EC certificate being issued, referred to in these reasons as Certificate 2.

8. Certificate 2, naming the prospective respondent as “*CSM (United Kingdom) Ltd*” states conciliation commenced on 7 May 2020 and ended on 7 June 2021. The limitation period for a claim relying on this certificate would run to 7 July 2020.

9. The claimant’s claim was presented on 5 July 2020, naming “*CSM (United Kingdom) Ltd*” as the respondent. This is after the limitation period for making a claim relying on Certificate 1, but before the expiry of the limitation period for Certificate 2.

### **The Parties’ Positions**

10. The respondent argues that a second EC certificate cannot be valid. Accordingly, the respondent submits that the time limit for presentation of the claimant’s claim must be the time limit that would from the dates if Certificate 1 is relied on. There is no dispute that on these dates the claimant’s claim would be out of time.

11. This is not in principle disputed by the claimant. The claimant, however, argues that he did not obtain a second certificate, certificate 2. Certificate 2 names the respondent as a prospective respondent. It is the claimant’s position that there was only ever one EC certificate correctly naming the respondent as a prospective respondent to a claim. Accordingly, the claimant argues that the certificate with the correct name must be one he can rely on.

### **The Law**

12. The respondent’s submission focussed on the application of rule 12 of the Employment Tribunal rules of procedure 2013 (as amended). This states:

*“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—*

*(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.”*

13. There is no dispute in fact that the name of the prospective respondent on Certificate 1 is not the same as the name of the respondent as stated on the claim form.

14. The respondent invites the Tribunal to apply rule 12(2A) which states:

*“(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.”*

15. This rule provides a power to accept a claim even if the name of the respondent on the claim form does not match the name of the prospective respondent on the EC certificate.

16. This is not, however, a case where the question is whether a claim form should be accepted by applying rule 12(2A).

17. The respondent could not direct the Tribunal to any power to amend, correct or rectify an EC certificate itself. The Tribunal was not able to identify any such power.

## **Conclusion**

18. The difference between the prospective respondent's name as stated on Certificate 1 and the respondent's name as stated on the claim form is clearly minor. It appears very unlikely that had the claimant sought to rely on Certificate 1 in presenting his claim, the claim would have been rejected under rule 12, because rule 12(2A) would have been likely to have been applied on referral to a Judge. That does not, however, have any relevance here. The power to overlook a difference in the name of the prospective respondent on an EC certificate and the respondent on as named on a claim form and thus not reject that claim, does not in any way change the EC certificate itself.

19. When the claimant presented his claim, there was only one EC certificate that identified a prospective respondent that matched the name the claimant gave for the respondent on the claim form. That was Certificate 2.

20. Accordingly, it cannot be correct that Certificate 2 was a second EC certificate against the same prospective respondent as on Certificate 1. Certificate 1 identifies a

different prospective respondent, despite it appearing to have been intended that it would identify the same prospective respondent.

21. Accordingly, because Certificate 2 was the first and only EC certificate that identified the respondent as the prospective respondent there is no basis to find it was a second EC certificate. It follows that the claimant can rely on Certificate 2, and the relevant limitation period must be calculated by reference to the dates on Certificate 2.

22. For this reason the claimant's claim is found to have been presented in time, the parties having agreed that if Certificate 2 can be relied on the claim was in time.

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Employment Judge Buzzard

Date: 25 August 2021

REASONS SENT TO THE PARTIES ON

6 September 2021

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