



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4111005/2021

Preliminary Hearing held by telephone at Glasgow on 20 September 2021

Employment Judge D Hoey

RECONSIDERATION HEARING

Miss P M G Douglas

**Claimant
Represented by:
Herself**

**Minister (Parliamentary Under Secretary of State
For Employment)/Ministry of department for
Work and Pensions**

First Respondent

**Minister (Parliamentary Under Secretary of State)
and Ministries of Home Office and Justice**

Second Respondent

**Minister/Secretary of State and Ministry of the
Foreign and Commonwealth Development Office**

Third Respondent

Wirral Metropolitan College

Fourth Respondent

University of Central Lancashire

Fifth Respondent

JUDGMENT

- 1. The claims as against the first, fourth and fifth respondents are accepted, the date of acceptance to be the date they were first presented as the Tribunal has the power and jurisdiction to consider them.**

- 2. The remaining claims (the claims against the second and third respondents) remain rejected, the Tribunal not having jurisdiction or the power to consider them.**

Reasons

1. The claimant presented an ET1 on 23 August 2021 naming 5 separate respondents. She had ticked the box stating her claims were for age and race discrimination and that she was raising other claims which the Tribunal could deal with. In an attachment document entitled "A brief summary of my complaints involving the respondents" there were 24 pages of text, much of which appears to be detailed background, including in relation to an order having been issued under section 42 of the Supreme Courts Act 1981 requiring the claimant to secure consent before raising proceedings in England and Wales.

Law

2. Employment Tribunals are statutory bodies and as such only have the power to consider claims that statute allows. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contain rules regarding the power of Employment Tribunals to consider claims and the rules underpinning which claims should be accepted.
3. In terms of Rule 8 of the Rules (found in Schedule 1 to the 2013 Regulations), a claim may be presented in Scotland if the respondent (or one of them) resides or carries on business in Scotland, one or more of the acts or omissions took place in Scotland, the claim relates to a contract under which the work was performed partly in Scotland or there is at least partly a connection with Scotland.
4. In terms of Rule 12, a claim shall be rejected if it appears that the claim is one which the Tribunal has no jurisdiction to consider. Whether or not the Tribunal has jurisdiction will depend upon the claim being raised and whether statute that gives rise to the claim empowers the Tribunal with the power to determine the claim.
5. A claimant can apply under Rule 13 for reconsideration of any rejection arguing that the decision to reject the claim was wrong or if the defect can be rectified. If the

decision was wrong, the claim will be treated as having been presented at the date it was first presented. If the decision was correct but the defect was rectified, the claim will be treated as having been presented at the date the defect was rectified. If the decision to reject the claim was correct, the claims remain rejected (and the claimant has the right to appeal to the Employment Appeal Tribunal).

Employment Tribunal did not appear to have jurisdiction

6. When the claims were presented it appeared to me that the Employment Tribunal did not have the jurisdiction, or the power, to consider the claims being raised. While the claimant had referred to different parts of the Equality Act 2010, it was unclear which claim related to which respondent. It also appeared to me that some of the claimants did not have any place of business in Scotland (nor any connection with Scotland). The claims were rejected, the Tribunal not having jurisdiction to consider them.

Reconsideration hearing fixed

7. The claimant sought reconsideration and this hearing was fixed at which the claimant attended. As the claim form had not made it clear what the specific claims were as against each respondent, we dealt with each respondent in turn. The claimant was able to explain what the claims were she was raising as against each respondent.

Claim against first respondent accepted as at date of first presentation

8. With regard to the claim against the first respondent, she explained that she had applied for a job with the “DWP” and that she had not been successful. While she also referred to a claim about not receiving job seeker’s allowance, it appeared to me that her claim in respect of which the Tribunal has jurisdiction is the alleged discrimination the claimant says she suffered in not being successful with her application. The Equality Act 2010 extends to job applicants – see section 39.
9. The claim as against the first respondent should therefore be accepted as at the date of original presentation.

Claim against second respondent remains rejected – no jurisdiction

10. The claim against the second respondent was a claim about a judge's decision. The claimant had applied for a change to the order that prevented her from raising proceedings in England and Wales. She believed the decision not to grant her application was discriminatory.
11. That was not a claim in respect of which the Employment Tribunal had the power or jurisdiction to consider. That claim remains rejected.

Claim against third respondent remains rejected – no jurisdiction

12. The claim against the third respondent was that the claimant believed a Government body had failed to consider her complaint against the Irish department of social protection (and that had amounted to unlawful discrimination). The claimant accepted this was a service provision complaint.
13. This was not a claim in respect of which the Employment Tribunal had the power or jurisdiction to consider. That claim therefore remains rejected.

Claim against fourth respondent accepted as at date of first presentation

14. The claim against the fourth respondent related to a college that was based in England and had no connection with Scotland. There was no place of business in Scotland. The claim related to a failure to offer the claimant a placement as a student. Initially I was of the view that as the fourth respondent does not carry on business in Scotland, there was no act or omission that took place in Scotland, the claim does not relate to a contract where work was performed in Scotland or there is some other relevant connection with Scotland, the claim as against the fourth respondent ought to have remained as rejected but I consider that in terms of Rule 8(3)(a) the Tribunal in Scotland has the power to consider the claim if the respondent, or one of the respondents, has a place of business in Scotland.
15. As the claimant argues that the fourth and fifth respondent were jointly responsible for the act giving rise to the unlawful discrimination I considered that there was an argument that the Tribunal had jurisdiction and on that basis the claim as against the

fourth respondent should be treated in the same way as the fifth respondent, and be accepted as at the date of first presentation.

16. The claimant argued both fourth and fifth respondents acted together and in light of that I consider that the claim as against the fourth respondent should be accepted as at the date of first presentation.

Claim against fifth respondent – accepted as at date of first presentation

17. The fifth respondent has no place of business in Scotland but the claimant believes that some research work is carried out in Scotland. On that basis she argued that the Tribunal had jurisdiction. She argued that the fourth and fifth respondent were operating jointly. As a higher education institution, it was not a commercial business. It was argued that research in Scotland ought to be sufficient to fix the Tribunal in Scotland with jurisdiction. I take the claimant's submission at its highest and on the basis that the fifth respondent appears to carry out some work in Scotland, albeit with no connection to the claimant, it appears that the provisions within rule 8 have been satisfied and in principle the Tribunal does have jurisdiction.
18. The claim against the fifth respondent relates to a failure to provide the claimant with "practical support to obtain (paid or unpaid) teaching work experience in a FE College or Secondary School" (page 12 of her brief summary) which the claimant argues is unlawful discrimination. She argues it was an act by both the fourth and fifth respondent.
19. While it is not clear whether or not the claimant would fall within the definition of a worker for the purposes of Part 5 of the Equality Act 2010 (see section 83) it appears that the Tribunal has jurisdiction to consider this claim and the claim is accepted as against the fifth respondent, with effect from the date of original presentation.

Summary

20. As the claims against the first, fourth and fifth respondents are claims in respect of which the Employment Tribunal has the power and jurisdiction to consider, those claims will be accepted as at the date of first presentation. They will be served upon

the respondents and a telephone case management case will be fixed with the agendas being issued in due course.

21. Further procedure will be determined once the respondents have provided a response, if so advised. I considered the terms of Rule 99 given there appears to be no connection with Scotland the claims being advanced. Rule 99 allows the Tribunal (on its own initiative) to consider transfer of the proceedings to England if the claims would be more conveniently determined there. This is a matter that should be considered at the case management preliminary hearing once the response forms, if any, have been received

22. The claims as against the second and third respondents will remain rejected as the Employment Tribunal has no power to consider those claims.

Employment Judge: David Hoey
Date of Judgment: 20 September 2021
Entered in register: 29 September 2021
and copied to parties