



EMPLOYMENT TRIBUNALS

Claimant
Mrs S Hasler

and

Respondent
Mr Jim Maag
c/o Curvin Transport Services

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Claimant's application for reconsideration under rule 13 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 is refused.

REASONS

1. The Claimant has applied for a reconsideration of the decision to reject her Claim Form dated 13 January 2021. The grounds are set out in her application of 29 October 2021.

Principles

2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under rule 12, a number of rules are set out which govern circumstances in which the tribunal staff ought to refer potential defects in a claim form to a judge. One of those circumstances is where the name of the respondent on the form is not the same as the name on the early conciliation certificate ('ECC') obtained from ACAS (rule 12 (1)(f)). In such circumstances, the rule directs that a judge should reject the claim unless he/she considers that an error was made and that it would not be in the interest of justice to reject it.
3. Rule 13 enables a claimant to apply for reconsideration in circumstances where the decision under rule 12 was wrong or where the defect has been rectified.

4. Rule 13 (2) requires an application for reconsideration to be made within 14 days of the date that the notice of rejection was sent. Under rule 5, the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

Relevant background

5. The history of this case, as disclosed from the Tribunal's file, is as follows;
- The Claimant issued a Claim Form on 4 December 2020. The Respondent was identified as 'Mr Jim Maag c/o Curvin Transport Services'. The ECC number, within box 2.3 of the Form, was cited as R210873/20/42;
 - The administrative staff at the Tribunal would have searched the ACAS database for a certificate with that number. The Certificate which matched it was issued in respect of 'AET Transport Services' on 17 November 2020;
 - The Claim Form was referred in to a judge for a decision on acceptance. Because the Respondents on the Claim Form and the ECC were fundamentally different, I directed that the Claim Form be rejected. A rejection letter was sent on 13 January 2021;
 - The Claimant then appealed that decision. In ground 7 of her Notice of appeal she stated that "*the wrong early conciliation certificate reference number was put on the form. The early conciliation certificate number R214376/20/40 [sic]*";
 - By an Order dated 27 April 2021, Choudhury J set the appeal down for a preliminary hearing in accordance with paragraph 10 (9). In the Reasons which accompanied the Order, the President encouraged the Claimant to consider an application for reconsideration in the meantime. The Order and Reasons were sealed on 15 May 2021 and apparently sent to the Claimant;
 - The Claimant then wrote to the Tribunal on 29 October 2021, over five months later, seeking reconsideration of the original refusal. In her application she said that she had obtained two ECCs; one for AET (R210873/20/42) and one for Curvin dated 17 November 2020 (R214376/20/40). She then said this;
"I put the first EC certificate number on the claim form (for AET) rather than the EC certificate for Curvin. The error made on my claim form was not significant. It was a small error in relation to either the name of the respondent all, in the alternative, in relation to the correct Early Conciliation Certificate number."

Discussion

6. The Tribunal was right to have rejected the Claim under rules 12 (1)(f) and (2A). There was significant disparity between the names of the Respondents in the Claim Form and the ECC which matched the number cited in the Form.

7. The Claimant approaches the issue from a different angle; she alleges that the error in relation to the ECC number was minor and that the Form ought to have been accepted at that point (rule 12 (1)(da)). The difficulty was that the search undertaken by the administrative staff at the tribunal could only have been undertaken on the basis of an ECC number. If the number on the Form was wrong, then no ECC would have been produced from the search. In this case, the number cited on the Form *did* produce a match, but to an ECC with a different name. There was no means of determining whether the mistake was small and the rejection was a proper one.
8. The Claimant's application for reconsideration could be treated as implicitly containing an application to amend her Claim Form to replace the ECC number with the one which she attributes to Curvin. If that was done, I would be prepared to accept that the difference in names was minor, if the ECC contained the name set out in the Employment Appeal Tribunal's Reasons; 'Curvin Transport (Poole) Ltd', as against 'Mr Jim Maag c/o Curvin Transport Services' in the Claim Form. There are, however three fundamental problems;
 - a. A search of the ACAS database has produced no match for a certificate number R214376/20/40. Unless or until the Claimant can supply one, the defect cannot be regarded as having been rectified, since the amendment does not resolve the issue;
 - b. Even if such an interpretation of the reconsideration application could be made (as implicitly containing an application to amend the Claim Form) and the new number was a valid ECC for 'Curvin Transport (Poole) Ltd', I would be prepared to accept that the defect had been rectified under rule 13 (1)(b) but the date of acceptance would not be backdated since the original decision to reject was not wrong. The claim would therefore be substantially out of time;
 - c. The Claimant's application does not contain an explanation for the delay thus far. She could have applied to the Tribunal for reconsideration of the original decision in January 2021. She did not do so. Having been prompted by the EAT, she might have issued her application for reconsideration in late May. Again, she did not do so. She has stated that she 'has not received the written judgement from the EAT', yet the Order, with Reasons appears to have been sent to her. Within her application she states that "*the EAT directed that I apply for reconsideration and I have done so as soon as possible.*" On the chronology set out above, that simply does not appear to have been the case. There is no basis upon which the discretion under rule 5 can be exercised judicially in the Claimant's favour.

9. Accordingly, the application for reconsideration pursuant to rule 72 (1) is refused because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Livesey
Dated: 11 November 2021

Judgment sent to parties: 3 December 2021

FOR THE TRIBUNAL OFFICE