EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4104186/2018

Reconsideration Hearing held in Glasgow on 28th June 2018

Employment Judge M Whitcombe

Ms L Miller	**Claimant** **In person**
	Karen Osborne (Solicitor)
Bute House Limited **Trading as Acorn Park Care Home**	**Respondent** **(did not attend)**

RECONSIDERATION

Employment Tribunal Rules of Procedure 2013
Rule 13(3)

The decision to reject the claim under rule 12 is revoked and the claim will be accepted in full. The circumstances fall within the exception in rule 12(2A). The claim will be treated as having been presented on 20th April 2018.

REASONS

1. This is a reconsideration hearing held under rule 13 of the Employment Tribunals Rules of Procedure 2013. In accordance with rule 13(3) only the Claimant attended the hearing. I provide these written reasons so that the Respondent can understand in sufficient detail what has happened in its absence.

Claim Form

2. In a claim form (ET1) presented to the Tribunal on 20th April 2018 the Claimant brought a claim for unfair dismissal. The Respondent was named as "Bute House Limited t/a Acorn Park Care Home" with an address of 8 Clober Road, Milngavie, Glasgow G62 7SW.

EC Certificate

3. ACAS were contacted in order to initiate the early conciliation ("EC") process on 23rd February 2018. The "EC" Certificate was issued by ACAS on 23rd March 2018.

4. The prospective respondent named on the certificate was "Acorn Park Care Home" with an address of Glen Road, College Milton, East Kilbride G74 5BL.

Referral and Rejection

5. On 23rd April 2018 the case was referred to the duty judge by the tribunal staff in accordance with rule 12(1)(f) of the 2013 Rules on the basis that the name of the Respondent on the ET1 was not the same as that on the EC certificate.

6. On 25th April 2018 I was acting as the duty judge and dealt with the referral. My decision on referral was that the claim should not be accepted, since I was not satisfied on the balance of probabilities that the circumstances met the test in rule 12(2A). In other words, I was not satisfied that the Claimant had made a minor error in relation to a name or address and that it would not be in the

interests of justice to reject the claim. While I noted that the name on the EC certificate was identified as a trading name on the ET1, I also noted that two different addresses had been provided without explanation. That was the basis of my decision, dated 25th April 2018. The apparent error included both the name and also the address of the Respondent.

7. The tribunal staff then acted in accordance with rule 12(3) and returned the claim form to the Claimant together with a notice of rejection and my reasons, together with information explaining how to apply for a reconsideration of the rejection. The notice of rejection was dated and sent on 30th April 2018.

Application for Reconsideration

8. On 11th May 2018, within the 14 day time limit for an application for reconsideration, Ms Obsorne applied in writing on behalf of the Claimant for a reconsideration in accordance with rule 13(2). The matter was once again referred to me. An explanation was offered for the difference in name, but not the difference in address. In those circumstances I did not think that the application could be determined without a hearing and so I directed that it should be considered at a hearing attended only by the Claimant. I also directed that the Claimant should file a skeleton argument.

9. That is how matters came before me today. Ms Osborne duly provided a very detailed and helpful skeleton argument. I am very grateful to her for the obvious effort involved. To the extent that certain facts were put forward on instructions in that skeleton argument I was happy to accept them as being true on the balance of probabilities. What follows is just a summary of the arguments put forward in full detail in the skeleton.

Claimant's submissions

10. I was referred to the judgment of Kerr J sitting in the EAT in ***Chard v Trowbridge Office Cleaning Services Ltd*** (UKEAT/0254/16/DM). He observed that considerable emphasis should be placed on the overriding objective when tribunals consider issues of this kind. In addition to dealing with cases "fairly and justly" it was also necessary to avoid unnecessary formality and to seek flexibility in proceedings. The reference to avoiding formality and seeking flexibility does not just mean avoiding an intimidating formal atmosphere during hearings, it also includes the need to avoid elevating form over substance in procedural matters.

11. Kerr J also considered the nature of the test in rule 12(2A). He cautioned against too literal a reading of the rule, which on the face of it sets out a two stage test, the first stage being a consideration of whether the error is minor without regard to the interests of justice, and the second stage then arising only if the judge has already concluded, ignoring the interests of justice, that the error is minor.

12. Kerr J regarded the literal reading as being too purist. Such a reading was inconsistent with the overriding objective and risked causing injustice. His preferred reading of rule 12(2A) was that the "interests of justice" were a useful pointer to the sorts of errors which ought to be considered "minor". Minor errors were ones which were likely to be such that it would not be in the interests of justice to reject the claim.

13. I was also referred to ***Mist v Derby Community Health Services NHS Trust*** (UKEAT/01 70/1 5/MC, HHJ Eady QC), in which the EAT held that the requirement in section 18A of the Employment Tribunals Act 1996 to provide the prospective respondent's name and address to ACAS before presenting an application to the employment tribunal was not a requirement for the precise or full legal title and it was safe to assume that a trading name would be

sufficient. The requirement was designed to ensure that ACAS was provided with sufficient information to be able to make contact with the prospective respondent if the claimant agreed that an attempt to conciliate should be made. It did not set any higher bar.

14. Although I was not referred to the decision of a different division of the EAT in ***Giny v SNA Transport Ltd*** (UKEAT/031 7/1 6, Soole J) I was aware of it. Soole J considered the judgement of HH J Eady QC in ***Mist*** and was reluctant to adopt any gloss on the "simple and straightforward language" of rule 12. in so far as there is any conflict or tension between the approach in ***Giny*** and the approach in ***Chard*** I follow the approach in the latter case because it is the (slightly) more recent EAT authority on rule 12. I also note that ***Giny*** was both cited and considered in ***Chard*** and that Kerr J was fully aware of the reasoning in that case. Kerr J's own analysis was in response to a submission that there was no material difference between the facts of ***Chard*** and those in ***Giny.*** While one division of the EAT cannot overrule another, there are several reasons in this case for me to follow the approach in ***Chard*** if there is a relevant difference.

Relevant facts

15. The relevant facts outlined in the Claimant's skeleton argument are as follows. For present purposes, I accept them as being true on the balance of probabilities. The Respondent would of course be free to dispute them in the future if it so chose. For obvious reasons, the Respondent is not at this point a participant in the proceedings.

16. At the date of dismissal the Claimant was employed by Bute House Ltd trading as "Acorn Park Care Home". Bute House Ltd is a private limited company with registered offices at 8 Clober Road, Milngavie, Glasgow G62 7SW.

17. However, "Acorn Park Care Home" was the name colloquially given to the Claimant's employer by all of its employees. The Claimant referred to the company as "Acorn Park Care Home" throughout her employment. She also

gave that name for the purposes of contacting ACAS, believing it to be the correct legal name of her employer. The Claimant provided the address of "Glen Road, College Milton, East Kilbride G74 5BL" for EC purposes because that was the address of her former place of work. The Claimant did not appreciate the significance of the company's registered office as the address for service.

18. Initially the Claimant was advised and represented by a trade union representative. Neither the Claimant nor her trade union representative were legally qualified. The Claimant engaged with early conciliation in the manner outlined above, with the assistance of her union but not solicitors. Only when the early conciliation certificate was forwarded to Thompsons (the Claimant's specialist solicitors) on 26th March 2018 was it appreciated that there was a difference between the information set out in that certificate and the information derived from a Companies House search.

Conclusion

19. When matters are seen in that context, I am now satisfied that the Claimant made an error in relation to both name and address which is properly described as "minor", and that it would be in the interests of justice for the claim to proceed. It was an error of form rather than substance and an error which has now been fully and adequately explained.

20. The situation falls within rule 12(2A) and I therefore allow a reconsideration of the decision to reject the claim under rule 13(1)(a) because that decision was wrong. I will substitute a direction that the claim should be accepted and served on the Respondent in the normal way. The claim will therefore be treated as having been presented on 20th April 2018.

21. I have allowed the reconsideration because I was presented with a much fuller explanation of the errors than was apparent from the ET1 or the correspondence seeking a reconsideration. The Claimant explained the error

in relation to address as well as the error in relation to name. If a similar issue were to arise in future, it might well be in the interests of all concerned to set out in correspondence the fullest possible explanation of apparent errors in the name or address of the respondent in order to avoid the need for hearings such as this. If the possibility of a rejection under rule 12 is already apparent to a claimant's solicitor at the time the ET1 is filed, a covering letter or email setting out a full explanation might well assist the duty judge to which the mandatory referral is subsequently made.

Employment Judge: **M Whitcombe**
Date of Judgment: **02 July 2018**
Entered in register: **04 July 2018**
and copied to parties