



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Ms O Oshea

v

Mitchells & Butler

**Heard at:** Cambridge

**On:** 19 April 2021

**Before:** Employment Judge S Moore

**Appearances**

**For the Claimant:** No appearance

**For the Respondent:** No appearance

## JUDGMENT

**The claim is struck out in its entirety because the Claimant has failed to undertake Early Conciliation.**

## REASONS

1. On 13 March 2022 the Claimant lodged a claim form in respect her employment with the Respondent between the dates 16.02.2022 and 13.03.22. No ACAS Early Conciliation certificate number was provided in box 2.3 and in response to the question, “why don’t you have this number?” the Claimant ticked the box stating, “My claim consists only of a complaint of unfair dismissal which contains an application for interim relief”.
2. The claim in fact also contained a number of other (unparticularised) claims.
3. In section 8 of the form, the Claimant ticked the box stating that she had been unfairly dismissed, the box that she had been discriminated against on grounds of disability (although in section 12 she ticked “no” to the question “Do you have a disability?”), the boxes stating she was owed arrears of pay and other payments, and stated that she was also making a claim for statutory sick pay.

4. In box 8.2, she set out the details of her claim as follows:

“Unfair dismissal due to employer breaching contract and not following procedures. Being forced to participate on an area which could put my health at risk. Denied SSP. Bullying in the workplace and discrimination. Reported to hospitality action and whistle-blower. Experienced actions that were unreasonable and verbal sexual assault.”
5. Accordingly, in addition to potential claims for automatic unfair dismissal under sections 100 and 103A of the Employment Rights Act, the claim, on its face, also raised complaints of sexual harassment, disability discrimination, and unlawful deduction of wages.
6. The Tribunal had no jurisdiction to consider these latter claims and they should have been rejected. This is because they are “relevant proceedings” within the meaning of s.18(1) of the Employment Tribunals Act 1996 to which the requirement to comply with the Early Conciliation process applies. Further they are not exempted from that requirement by reason of regulation 3 of the Employment Tribunals (Early Conciliation: Exemption and Rules of Procedure) Regulations 2014 because they were not instituted on the same claim form as proceedings which are not relevant proceedings within the meaning of regulation 3(1)(b)), (the claim for unfair dismissal being potentially exempt from the Early Conciliation process by reason of regulation 3(1)(d) and not 3(1)(b)).
7. Furthermore, the claim form did not appear to contain an application, for interim relief. The only details of the claim were as set out above at paragraph 4, and in section 9 of the form the Claimant ticked the box stating that she was seeking compensation only; she did not tick either the box stating she was seeking reinstatement or the box seeking re-engagement.
8. Nevertheless, on 16 March 2022, the Claimant was sent an Acknowledgement of her Application for Interim Relief and a Notice of Hearing informing her a hearing was to be held to consider her application for Interim Relief on 19 April 2022. The Acknowledgement stated that “The Respondent will be given a copy of the application and any supporting documentation at least 7 days before the hearing.”
9. No documentation additional to the Claim Form was provided by the Claimant either to the Tribunal or the Respondent prior to the date of the hearing.
10. The hearing was held via CVP to which a link was provided by email to the Claimant, but not to the Respondent since the Tribunal did not have its telephone number or email address. Unsurprisingly, the Respondent did not attend the hearing. However, neither did the Claimant.
11. In this context it was necessary to decide whether the Claimant had made an application for interim relief and which parts of her claim (if any) the

Tribunal had jurisdiction to consider, given that she had not complied with the Early Conciliation process.

12. The relevant procedural background is that from 6 May 2014, most prospective ET Claimants have had to undertake ACAS Early Conciliation. As section 18A of the Employment Tribunals Act 1996 (inserted by section 7 of the Enterprise and Regulatory Reform Act 2013) provides: “Requirement to contact ACAS before instituting proceedings:

“18A(1) Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter. ...”

....

(8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4). ...

13. Further rule 12(2) of the Employment Tribunals Rules of Procedure 2013 provides that “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 subparagraph (a) [or] (d) of paragraph (1)”.

14. Subparagraph (1)(a) refers to a claim which the tribunal has no jurisdiction to consider. Subparagraph (1)(d) refers to a claim 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.

15. In **EON Control Solutions v Caspall UKEAT/0003/19** Judge Eady stated:

42. On its face, Rule 12 ET Rules would seem to envisage that the input of the Judge (under para (2)) will arise after the claim form has been the subject of a reference under para (1). I am unable, however, to see that this is a necessary requirement. The language of Rule 12(2) obliges the ET to reject the claim if the Judge considers sub-paras (1)(a), (b), (c) or (d) apply; the obligation is not stated to be limited to a particular stage in the process but is expressed in general terms, so as to arise at whatever stage the relevant judicial consideration is undertaken.

16. As regards the discrimination claims and claim for unlawful deduction of wages, they are relevant proceedings within the meaning of section 18(1) of the Employment Tribunals Act 1996, and the requirement to undertake Early Conciliation applies in respect of them (regardless of whether or not the Claimant made an application for interim relief in respect of her claim for unfair dismissal). Since the Claimant did not comply with that Early Conciliation process, it follows the Tribunal has no jurisdiction to hear these claims and they must be struck out.

17. As regards the claim for unfair dismissal, although the Claimant ticked the box stating her claim contained an application for interim relief, the claim contained no such application and nor was any such application made prior to, or at, the hearing. I therefore find that no application for interim relief has in fact been made. Since the Claimant has made no application for interim relief she was required to conciliate before bringing proceedings with the inevitable consequence that because she failed to do so the Tribunal has no jurisdiction to hear the claim for unfair dismissal either.
18. It follows that the Tribunal has no jurisdiction to hear any part of the Claimant's claim and it is struck out in its entirety. In order to bring any of her claims the Claimant must first comply with the Early Conciliation process.

---

Employment Judge S Moore

Date: 19/4/2022

Sent to the parties on: 21/4/2022

N Gotecha

For the Tribunal Office