



EMPLOYMENT TRIBUNALS

Claimant: Saidi Ali Ibrahim
Respondent: G4S Secure Solutions (UK) Limited

Heard at: London South Employment Tribunal

On: 23rd May 2022

Before: Employment Judge Apted

Representation

Claimant: Litigant in person.
Respondent: Mr Clark

JUDGMENT

1. The claimant's claims for unpaid notice pay and unpaid holiday pay are dismissed under section 18A(8) of the Employment Tribunals Act 1996, as the tribunal does not have jurisdiction to hear them.

REASONS

[These Reasons have been prepared at the request of the claimant]

Introduction:

2. The claimant was employed by the respondent on the 16th March 2016 as a Regional Relief Security Officer. His employment was terminated on the 30th June 2021 on the grounds of capability.
3. On the 2nd July 2021, the claimant issued a claim in the Employment Tribunal using form ET/1. At paragraph 2.3 the claimant ticked the box stating that he did not have an ACAS certificate number and also ticked the box stating that ACAS did not have the power to conciliate on some or all of his claim.
4. At paragraph 8.1 of the form ET/1, the claimant identified his claims as "other payments" namely "Compensation and Pension". At 8.2 the claimant

stated that he had sustained an injury at work causing chronic back pain resulting in stress, anxiety, and depression.

5. Early conciliation commenced on the 15th July 2021 and a certificate was issued on the 26th August 2021.
6. Also on the 15th July 2021, the claimant was paid £2389.66 in respect of accrued but untaken holiday pay and £1871.10 notice pay.
7. On the 21st September 2021, the respondent submitted a form ET/3 in response to the claim.
8. On the 31st September 2021, the Tribunal issued a Notice accepting the claim.
9. On the 18th October 2021, the Tribunal sent a Notice stating that the claim had been rejected because the ET/1 did not contain an early conciliation number.
10. On the 24th November 2021, the Tribunal sent a further Notice stating that the claim was accepted after reconsideration, because the defect which led to the claim being rejected had been rectified and the ET/1 was to be treated as being received on the 21st October 2021.
11. Accordingly, on the 22nd December 2021, the respondent filed a further ET/3 in response.
12. On the 28th January 2022, a Notice of the Final Hearing on the 23rd May 2022 was sent to both parties.
13. On the 7th April 2022, a further letter was sent to both parties by the Tribunal informing them that the question of whether the claim was issued in time would be considered first and if allowed to proceed, then the claimant's money claims would be dealt with in the same hearing.

The hearing:

14. The hearing was to have been conducted using the Cloud Video Platform (CVP). A Notice instructing all parties how to use the CVP was sent on the 12th May 2022. On the morning of the hearing, the claimant was unable to connect via CVP. Despite the best efforts of the Tribunal staff, the claimant remained unable to connect. To avoid the hearing being postponed, the claimant was invited to attend the Tribunal in person, which he did. The claimant and I therefore appeared in person at the London South Employment Tribunal and Mr Clark on behalf of the respondent appeared via CVP. I was satisfied that it was in the interests of justice for the hearing to be conducted in this way. The claimant and I could see and hear Mr Clark clearly. I was satisfied that there were no barriers to communication. I was equally satisfied that the principles of open justice were secured.
15. At the outset of the hearing, I confirmed that both the claimant and Mr Clark had access to the same documents. These consisted of an agreed bundle split into 3 parts containing a total of 170 indexed and paginated pdf pages.

16. The claimant confirmed that he had had sufficient time to gather his thoughts and that he was ready to proceed with the hearing.
17. During the course of the hearing, I heard sworn evidence from the claimant which I noted in my record of proceedings. I then heard submissions from Mr Clark on behalf of the respondent and from the claimant, both of which I again noted in my record of proceedings. At the conclusion of the hearing, I gave my decision orally with reasons.
18. Before coming to my decision, I considered all of the written and oral evidence in the round. I only refer to those pieces of evidence necessary to explain my decision. The fact that a piece of evidence is not referred to, does not mean that it has not been considered.

The issues:

19. I clarified with the claimant that his claim was for damages for injuries sustained whilst at work resulting in back pain which had caused stress, anxiety, and depression. He confirmed that the respondent had paid him notice pay and holiday pay.
20. I also clarified with the claimant that the first issue that would have to be decided was whether the tribunal had jurisdiction to hear his claim under section 18A of the Employment Tribunals Act 1996

The Law:

21. Rule 8 of The Employment Tribunals Rules of Procedure 2013, as amended (the Rules) reads as follows:

“Presenting the claim

8.—(1) A claim shall be started by presenting a completed claim form (using a prescribed form) in accordance with any practice direction made under regulation 11 which supplements this rule.”

22. Rule 6 of the Rules reads as follows:

“Irregularities and non-compliance

6. A failure to comply with any provision of these Rules (except rule 8(1), 16(1), 23 or 25) or any order of the Tribunal (except for an order under rules 38 or 39) does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include all or any of the following—

- (a) waiving or varying the requirement;*
- (b) striking out the claim or the response, in whole or in part, in accordance with rule 37;*
- (c) barring or restricting a party’s participation in the proceedings;*
- (d) awarding costs in accordance with rules 74 to 84.”*

23. Section 18A Employment Tribunals Act 1996, reads as follows:

“ 18A Requirement to contact ACAS before instituting proceedings

- (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.*

This is subject to subsection (7).

- (2) *On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.*

- (3) *The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.*

- (4) *If—*

(a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or

(b) the prescribed period expires without a settlement having been reached, the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.”

24. Section 18A(8) of the Employment Tribunals Act 1996 reads as follows:

“(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).”

25. I have also had regard to the judgment of His Honour Judge Shanks sitting in the Employment Appeal Tribunal in **Pryce v Baxterstorey Limited** 2022 EAT.

Findings of facts:

26. The relevant facts are therefore as follows. On the 2nd July 2021, the claimant presented an ET/1. When he did so, he did not have a certificate from ACAS confirming that early conciliation had occurred. That did not commence until 13 days later on the 15th July 2021. The ACAS certificate was not issued until the 26th August 2021. The claimant was wrong to have ticked the box stating that his claim was one to which early conciliation did not apply.

27. On the 31st September 2021, the claim was nevertheless accepted by the tribunal. In my judgment, the tribunal had no power to do so. The claim had not been issued with an ACAS certificate and the claim therefore did not comply with section 18A Employment Tribunals Act 1996.

28. At some point between then and the 18th October 2021, the Tribunal must have realised that when the claim was issued there was not an ACAS certificate because on the 18th October 2021, the claim was subsequently rejected because there was “no conciliation number”.

29. At some point thereafter, that certificate was either sent to the Tribunal or found, because on the 24th November 2021, the claim was accepted after reconsideration.
30. In my judgment, the Tribunal still had no power to accept the claim. When the original claim had been issued, it did not contain an ACAS certificate. The fact that a certificate was subsequently sent, does not remedy the original procedural irregularity. The Tribunal had no power to accept the claim under s18A Employment Tribunals Act 1996, and the subsequent submission of the ACAS certificate does not cure that irregularity. That in my judgment is in accordance with the decision of HHJ Shanks in **Pryce v Baxterstorey Ltd** 2022 EAT 61, above.
31. In my judgment therefore, the tribunal does not have jurisdiction to hear this claim and it is rejected under s18(A)(8) Employment Tribunals Act 1996, as it was not presented correctly.
32. In any event, the claimant has accepted in evidence that he has been paid his notice pay and that he has been paid his accrued and untaken holiday pay. He also confirmed that his claim is for damages for an injury sustained whilst at work. Whilst the tribunal has every sympathy with the claimant the Employment Tribunal has no jurisdiction to award damages for injuries sustained whilst at work. In relation to any claim for unlawful deduction of wages in relation to notice pay and holiday pay, the claimant accepts that he has been paid these monies.
33. The claimant's claims are therefore not well founded are dismissed under section 18A(8) of the Employment Tribunals Act 1996, as the tribunal does not have jurisdiction to hear them.

Employment Judge **Apted**

Date: **26th May 2022**

JUDGMENT & REASONS SENT TO THE PARTIES ON

Date: **01 June 2022**

FOR THE TRIBUNAL OFFICE