



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 1/7/2022

MS MICHELLE ROBINSON

Claimant

-and-

(1) 10 KING'S BENCH WALK CHAMBERS

(2) MR MICHAEL HARRIS

(3) MR LEE WILLIAMS

(4) MR STEVE CLARKE

Respondents

Before: Employment Judge Mr J S Burns

Representation

Claimant: In person

Respondent: Ms P Leonard (Counsel)

JUDGMENT

1. The Claimant's application by email on 19 August 2021 to strike out the defences of the 2nd, 3rd and 4th Respondents on the ground that they had not filed responses (in accordance with Rule 16 (1) and or 16(2) of Employment Tribunals Rules of Procedure 2013), is dismissed.
2. The Claimant's application to strike out the defences generally on the ground that (i) they have no reasonable prospect of success and (ii) misconduct (consisting in the Respondents' allegation that the Claimant has stolen money); is dismissed.
3. The Respondents' application to strike out the claims against the First Respondent (R1) on the basis that the Tribunal lacks jurisdiction over it, is dismissed.
4. The Respondents' application to strike out the claims against the 2nd, 3rd and 4th Respondents on the basis that the Claimant has attempted to institute relevant proceedings against them without complying with section 18A ET Act 1996, is dismissed.

5. The Claimant's application to add Lisa Weston, Nicholas O'Brien, Richard Thompson, Alex Swain, George Symes -as additional Respondents to her claims - is dismissed.

REASONS

1. This was an Open Preliminary Hearing to determine matters identified at a previous case management hearing (on 11/3/22).
2. In addition, the Claimant applied formally on 8/5/22 to amend her claim by adding 5 additional co-respondents namely Lisa Weston, Nicholas O'Brien, Richard Thompson, Alex Swain, George Symes - and it was directed by EJ Tinnion that that would be considered at the OPH today.
3. Recently, the Claimant applied informally to strike out the defence of all existing Respondents on the additional grounds that (i) they had been guilty of misconduct consisting in alleging that the Claimant had stolen money and (ii) their defence had no reasonable prospect of success. The Respondent did not object to me dealing these matters despite the lack of proper notice and application.
4. The Claimant objected to my hearing the application in paragraphs 3 and 4 of the judgment today on the basis that no formal application had been made. On 13/7/21 a formal application (a copy of which appeared in the OPH bundle before me from page 39 onwards) was in fact sent to the Tribunal but not served on the Claimant. The Claimant denied ever seeing this document earlier than about three days ago. Even so, the substance of the applications was identified at the hearing on 11/3/22 at which a direction was issued that the applications in question would be determined today. The Claimant understood the applications and her cross-application in May 22 to join additional Respondents (paragraph 5 above) was a response to the applications to strike out. I decided that there was no forensic prejudice to the Claimant being required to deal with the applications today and so I overruled her objections.
5. I received written and oral submissions from both sides and was referred to a 360 page bundle and to various legal authorities.

Reasons for Paragraph 1 of the judgment.

6. The Claimant's application was as follows:

The Second to Fourth Respondents, namely, Michael Harris, Lee Williams, Steve Clarke, each have not filed a response on a form prescribed by HM Courts and Tribunals Service, that is, the ET3 response form in accordance with rule 16 (1) Employment Tribunals Rules of Procedure 2013 (as amended October 2020).

The tribunal office have not received an ET3 form in respect of each of the above respondents in accordance with rule 17 (1) (a) Employment Tribunals Rules of Procedure 2013 (as amended October 2020) and within the time limit of 28 days

No application for an extension of time to file an ET3 response form has been made in respect of the Second to Fourth Respondents

The tribunal office have not received an ET3 response form that may include the response of more than one respondent in accordance with rule 16 (2) Employment Tribunals Rules of Procedure 2013 (as amended October 2020)

There is an absence of minimum information required on the ET3 response form under rule 17 (1) (b) (i) (ii) and (iii) Employment Tribunals Rules of Procedure 2013 (as amended October 2020) in respect of the Second to Fourth Respondents.

7. Rule 16 (1) and (2) reads as follows:

(1) The response shall be on a prescribed form and presented to the tribunal office within 28 days of the date that the copy of the claim form was sent by the Tribunal.

(2) A response form may include the response of more than one respondent if the responses give rise to common or related issues of fact or law or if it is otherwise reasonable to be made on a single response form.

8. There is a proper space on the standard ET3 form for the insertion of the name of only one Respondent. Therefore, where Rule 16(2) permits a single response to “include the response of more than one respondent” this cannot mean that each Respondent’s name has to be mentioned on the ET3 form, but rather must mean that it suffices if Grounds of Resistance (incorporated by reference in or accompanying an ET3 form) state that they stand as the Defence of all Respondents.

9. On 13/7/22 R1 filed an ET3 with the name of R1 in box 2.1. Accompanying the ET3 form were Grounds of Resistance paragraph 2 of which reads *“These Grounds of Resistance are presented on behalf of all respondents...”*

10. Even if no other ET3 form was filed, this would appear to comply with Rule 16(2) by each Respondent.

11. However, on the Tribunal file appears a copy of an email written by the Second Respondent dated 20/8/2021 as follows: *“I am grateful to the claimant for putting the first respondent on notice about her application. My current understanding is that the Tribunal of its own motion has removed the second, third and fourth claimants from this claim. The claimant may not be aware of this. In any event, I request on behalf of the first respondent that the claimant’s application is considered by the Tribunal along with other matters at the preliminary hearing. For the avoidance of doubt, I can confirm that for safety’s sake the second, third and fourth each submitted a response with the same grounds of resistance as the first respondent on 13 July 2021. Their respective submission numbers are: 222017674600 222017674800 222017675000”.*

12. Neither the Claimant or Ms Leonard was aware of this email until I discovered it on the file today but it tends to suggest, and I find, that in fact each Respondent did file a separate ET3 in any event.

13. I do not agree that the Grounds of Resistance do not provide minimum information. They set out the Respondents’ version of events and offer a non-discriminatory explanation for the dispute between the parties

Reasons for Paragraph 2 of the judgment.

14. The defence does not have no reasonable prospect of success. On the contrary the defence has an excellent prospect of success. The real dispute between the parties is about whether or not the Claimant should have repaid to R1 a small sum of money (£360) - which today she agreed she received (as part of a larger sum of £760) - and which the Respondent says was

payment for a hearing which the Claimant admits she did not attend, and hence she was not entitled to retain. This appears to have absolutely nothing to do with the Claimant's race and it is very unlikely that it does.

15. Contrary to the Claimant's submission, the Respondents have not accused the Claimant of theft. The defence states that the Claimant has retained money she is not entitled to retain, which statement is not misconduct.

Reasons for paragraph 3 of the judgment.

16. The First Respondent is a trade organization over which the Tribunal has jurisdiction under section 57 EA 2010. I am grateful for the Respondents' and Ms Leonard' integrity, demonstrated by their pointing this out to me. The fact that R1 is not a barrister or barrister's clerk (as referred to in section 47 - which section is the basis of jurisdiction against the other Respondents) is irrelevant. The Claimant did not specify in her ET1 or POC that she was suing R1 under section 47 so no application to amend is necessary.

Reasons for paragraph 4 of the judgment

17. The Claimant obtained an EC certificate against R1 prior to the presentation of her claim on 21/11/2020. She inserted only the R1 certificate number on her ET1 form. She obtained EC certificates against R2-R4 on 23/11/2020.
18. On 11/6/2021 a Tribunal administrative officer wrote to the Claimant asking her to send additional EC certificates for R2-R4. On 17/6/21 June the Claimant replied by email attaching copies of them.
19. The Claimant received an acceptance of claim against R1 dated 18/6/21. She also received a Notice of rejection of her claims against R2-R4. She was unable to produce a copy of the Notice of rejection today nor could I find it on the Tribunal electronic file, but on a balance of probabilities I find that it was sent on the same day as the notice of acceptance - namely 18/6/21.
20. The Claimant wrote in about this and in reply REJ Wade caused a letter to be sent by email to the Claimant dated 2/7/21 which reads as follows: *"Your claim against the first respondent, 10 Kings Bench Walk Chambers has been accepted and a preliminary hearing set for 16 August 2021. This explains the "acknowledgement of claim" and the notice of hearing. The "Rejection of claim" relates to your claim against the three additional respondents Michael Harris, Lee Williams and Steve Clarke. Although you have provided ACAS certificates, you did not put the certificate number in the claim form at sections 2.6, 2.8 and 13. The rejection letter incorrectly said that the error was at section 2.3 for which the judge apologises. The rules require you to do so and that is why the claim has been rejected. As explained in the rejection letter you can apply for reconsideration - this would entail asking for permission to amend the form to insert the correct certificate numbers into the ET1 at the correct places. The rules are very strict, and the tribunal is obliged to abide by them. I hope that this explains the situation satisfactorily."*

21. In response the Claimant on 2/7/21 replied as follows *"Application for reconsideration of Tribunal decision ..., Thank you for your email. I would like to apply for reconsideration of Tribunal decision "Rejection of claim". I am requesting the Tribunal's permission to amend the ET1 claim form, Case number 2207251/2020, to insert the ACAS certificate numbers in the claim form at sections 2.6, 2.8 and 13 in relation to the three additional respondents Michael Harris, Lee Williams and Steve Clarke respectively. I have now followed the early conciliation rules because ACAS provided me with three ACAS EC certificate numbers pertaining to the three additional respondents above. My apologies for the omission. Yours sincerely,"*

22. The Claimant's application (which I find was an application made under Rule 13) was not put before a judge and had not been considered before today.
23. Rule 13 reads as follows
- (1) *A claimant whose claim has been rejected (in whole or in part) under rule 10 or 12 may apply for a re-consideration on the basis that either—*
 - (a) *the decision to reject was wrong; or*
 - (b) *the notified defect can be rectified.*
 - (2) *The application shall be in writing and presented to the Tribunal within 14 days of the date that the notice of rejection was sent. It shall explain why the decision is said to have been wrong or rectify the defect and if the claimant wishes to request a hearing this shall be requested in the application.*
 - (3) *If the claimant does not request a hearing, or an Employment Judge decides, on considering the application, that the claim shall be accepted in full, the Judge shall determine the application without a hearing. Otherwise the application shall be considered at a hearing attended only by the claimant.*
 - (4) *If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.*
24. The Respondents submitted today that the application made by the Claimant was one day late because the rejection was sent on 18/6/21 and the Claimant's application was on 2/7/21. That submission is incorrect because under Rule 4(3), 18/6/21 is not included in the 14 days permitted by Rule 13(2).
25. Furthermore, as appears from the REJ's message of 2/7/21, the original rejection letter was incorrect and was only corrected into a proper rejection letter which the Claimant could sensibly respond to on 2/7/21, so the time limit ran from then. If both these conclusions are wrong, then in any event, in the circumstances I extend time under Rule 5.
26. The Respondents also referred to the EAT authority E.ON CONTROL SOLUTIONS LIMITED and MR SIMON CASPALL UKEAT/0003/19/JOJ. This authority establishes that if there is no EC certificate such that the claim has been rejected, then there is nothing to amend and the only way to rectify the situation is to apply not to amend but to rectify the defect under rule 13 such that a resubmitted claim can then be accepted.
27. The Respondents submitted that in order to make a valid application under Rule 13 the Claimant would have had to "rectify the defect" by lodging a new or at least resubmitted ET1 form with the correct EC certificate numbers written in the boxes for each of R2-4, but that she had failed to do so.
28. The Claimant's communication of 2/7/21, which was in terms dictated by the REJ letter earlier that day, was in effect an application for reconsideration of the rejection on the basis that the defect could be rectified, and rectification of the defect by a request for permission to enter these on the ET3 form.

29. Having ascertained that the application had not previously been dealt with by a judge, I dealt with it today and accepted the claims against R2-4 with effect from 2/7/21 - see separate CMO.

Reasons for paragraph 5 of the judgment

30. The Claimant's application to join these additional parties is made very late. There is no good reason why any valid claims against these individuals could not have been made when the ET1 was presented against R1 in November 2020. These claims against the new proposed parties would be significantly out of time.

31. The Claimant has not shown why these particular individuals should be added or that there are any good causes of action against them, or why it is necessary for the protection of any legitimate interest that they be sued in this matter.

32. The Claimant believed that they may be part of the management committee of R1. That in itself, even if it was true, is not enough to require their inclusion, particularly given the fact that the Tribunal has jurisdiction over R1 which brings in all members of chambers in any event.

33. I was told by Ms Leonard that at least one of the proposed new parties is no longer a member of R1 and that two others are no longer on the committee in any event.

34. I regard the extant claims against the existing Respondents as being very weak. It is not in the interests of justice to expand this matter any further.

J S Burns Employment Judge
London Central
1/7/2022
For Secretary of the Tribunals:Olu
Date sent to parties: 04/07/2022
