



EMPLOYMENT TRIBUNALS

Claimant: Angela Wickham

Respondent: London Borough of Merton

Heard at: London South **On:** 11 July 2022

Before: Employment Judge Khalil (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr Davies, Counsel

JUDGMENT FOLLOWING AN OPEN PRELIMINARY HEARING

Decision

The Tribunal does not have jurisdiction to hear the claim because of a combination of S.18 (8) of the Employment Tribunals Act 1996 and Rule 12 (1) (a) and (2) of the Employment Tribunals Regulations 2013, Schedule 1.

Reasons

1. The claim form was presented on 9 April 2021. The claimant claims Race Discrimination.
2. The claimant commenced ACAS Early conciliation on 7 April 2021. The ACAS Early Conciliation Certificate was issued on 12 April 2021.
3. The claim form was rejected on 10 May 2021 as there was no ACAS Early Conciliation Certificate number.
4. The claim form was accepted following Reconsideration on 20 May 2021.
5. These letters had not been seen by the respondent.

6. An ET3 out of time was accepted on 25 April 2022 for reasons given in the respondent's application dated 16 March 2022.
7. The Tribunal concluded today that the Tribunal did not consider the date of the Early Conciliation certificate post-dating the presentation of the claim form.
8. S. 18 Employment Tribunals Act 1996 ('ETA') says:

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.

(5) The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.

(6) In subsections (3) to (5) "settlement" means a settlement that avoids proceedings being instituted.

(7) A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases.

The cases that may be prescribed include (in particular):

cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter.

cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are.

cases where section 18B applies because ACAS has been contacted by a person against whom relevant proceedings are being instituted.

(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).

9. Rule 12 Employment Tribunal Regulations 2013 Schedule 1 says:

Rejection: substantive defects

12. (1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be—

(a) one which the Tribunal has no jurisdiction to consider

(2) 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 sub-paragraphs (a) of paragraph (1).

10. Accordingly, the Tribunal concluded that when the claim was presented on 9 April 2021, the Tribunal had no jurisdiction to the claim as there was no ACAS Early Conciliation Certificate which had been issued before that date. No exemption under S. 18 (7) ETA applies.

11. The claimant's right to request a Reconsideration under Rule 13 is attached.

Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Employment Judge Khalil
11 July 2022