



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4109771/2021**

**Considered in chambers on 4 August 2021**

**Employment Judge: Susan Walker (sitting alone)**

**Mr A Booth**

**Claimant**

**NHS England**

**Respondent**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is the claim is struck out under rule 37(1) (a) as having no reasonable prospects of success as the Employment Tribunal in Scotland does not have jurisdiction under rule 8 to consider it.

**REASONS**

**Introduction**

1. This claim of sex and race discrimination has an unfortunate procedural history. I have set it out in full below as it may assist the claimant if he wishes to present a claim to the Employment Tribunal in England and Wales. Ultimately, of course, it will be a matter for that Tribunal whether it accepts the claim which is likely to be out of time.

**Relevant law**

- 5 2. Rule 8(3) of the Employment Tribunals Rules of Procedure 2013 provides that a claim may be presented in Scotland if-
- a) The respondent, or one of the respondents, resides or carries on business in Scotland;
  - b) One or more of the acts or omissions complained of took place in  
10 Scotland;
  - c) The claim relates to a contract under which the work is, or has been performed partly in Scotland; or
  - d) The Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at  
15 least partly a connection with Scotland.
3. Rule 12 provides that the staff of the Tribunal office shall refer the claim to an Employment Judge if they consider that the claim may be one which the Tribunal has no jurisdiction to hear, (rule 12 (a)). The claim shall be rejected if  
20 the Employment Judge considers that the Tribunal has no jurisdiction. There are a number of other grounds which would lead to rejection which are not relevant here. If the claim is not rejected under rule 12, it is then sent to the respondent (rule 15).
- 25 4. Rule 37 provides that at any stage in the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out a claim on a number of grounds including, that it has no reasonable prospect of success (rule 37 (1)(a)).

30 **Procedure in this case.**

5. The ET1 claim form presented by the claimant online on 27 May 2021 identified NHS England as the respondent with a PO Box as the address. In box 2.4, where the claimant is asked to provide details if he worked at a different address, he put "Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB."

6. Had the claimant worked at such an address, this would have provided jurisdiction for the Employment Tribunal in Scotland and the claim was not rejected under rule 12. .
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7. The claim was acknowledged on 3 June 2021 and the claimant was advised that, as is standard practice, the case had been listed for a Preliminary Hearing for case management by telephone on 28 July 2021. The claim (including a notice of that hearing) was also sent to the respondent on 3 June 2021 .
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8. The claimant emailed the Tribunal on 27 May 2021 saying “ I have possibly made an error in submission? I am living in York, with a “virtual” work employer in Edinburgh (it was not possible to proceed on the application online without provision of my work address despite it being “optional”), the respondent is based in Redditch, England. I am unclear how this arrived at the Glasgow ET - please could you advise how I address this, if at all its needed to be “ (sic).
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9. This email was referred to a legal officer on 4 June 2021. She understood this to be a request for transfer and advised that if the claimant wished the case to be transferred to England and Wales, he should make a formal application, copied to the respondent, and confirming to the Tribunal that this had been done. That direction was actioned and sent to the claimant on 10 June 2021 .
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10. The claimant replied on 10 June 2021 “Thank you so much, happy to proceed at Glasgow if it’s all OK then”.
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11. No response was received. The claim was referred to an Employment Judge to consider issuing a judgment without a hearing under rule 21. Employment Judge Eccles was concerned that the respondent may not have received the ET1 and directed that the claimant be advised that she was considering re-serving the claim on the work address in Edinburgh and that the claimant should advise if he had any objections. That was sent to the claimant on 20 July 2021 .
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12. The claimant responded on 20 July 2021. He said that the address in Edinburgh was “my employer at the time healthcare improvement Scotland” and they should not be contacted as they are not related to the claim. He said
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he was unable to submit a form leaving this blank. He said that the respondent was NHS England.

- 5 13. Judge Robison then asked the claimant to provide a physical address for the respondent. That letter was sent on 23 July 2021 .
- 10 14. The claimant replied on 23 July that he had phoned the general enquiry line. They had been unable to provide an address other than the PO Box. The claimant said he had previously worked at head office and provided that address as Skipton House, 80 London Road, London SE1 6LH.
- 15 15. The file was then considered by Employment Judge Maclean. She noted that with the new information provided, it appeared that the respondent did not have an address in Scotland, as indicated on the ET1 . She was therefore concerned that the Tribunal had no jurisdiction under rule 8. She advised the claimant on 27 July 2021 that she was considering striking out the claim under rule 37(1)(a) on the ground that there was no jurisdiction. The claimant was given until 23 August to provide any objections.
- 20 16. The claimant replied by email on 28 July. He said "I highlighted on 27 May 2021 by post and email of the potential issue of being in England and the respondent being in England though somehow was placed to be heard in Glasgow. I put this down to a potential form error and asked how best to proceed. In response, no request for an updated address was made nor was I advised of the potential for strike out. Had I been at that point I would have provided the address and when informed completed a new claim form. My concern now is that the claim is out of time for a new one, is there anything the Judge may be able to do instead of striking this out or can the Tribunal provide an overview for the new tribunal to support extenuating circumstances?"

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### Decision

- 35 17. Unfortunately, I consider I have no option but to strike out the claim. It is clear that the Tribunal has no jurisdiction to consider the claim under rule 8. The claim was routed to Scotland because of the address provided by the claimant as being where he worked - in Edinburgh.

18. Had he worked for the respondent in Edinburgh (or even if the respondent carried on business there at all), then it would not matter that the claimant was based in England nor that the respondent's head office was in London. The Tribunal in Scotland would have had jurisdiction under rule 8(3) (a).

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19. It now appears that this address was provided in error and the Edinburgh address is an entirely different organisation to the respondent. It is simply the place where the claimant was working when he presented his claim. It has no connection to the claimant nor to the respondent.

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20. As the Tribunal has no jurisdiction, it is not possible even to transfer the claim. A transfer under rule 99 proceeds on the basis that the transferring Tribunal has jurisdiction.

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21. I consider therefore I have no alternative but to strike out the claim. I have provided full details of what has happened as this may assist the claimant if he seeks an extension of time to present his claim in England & Wales. I stress, though, that decision would entirely be a matter for the Tribunal in England & Wales

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22. Finally, for completeness, I should note that we have received no correspondence from the respondent and it may be that they are unaware of the claim or any of the procedure to date. The claim was never re-served on the head office address.

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Employment Judge: Susan Walker  
Date of Judgment: 05 August 2021  
Entered in register: 12 August 2021  
and copied to parties

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