



EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING BY VIDEO

Claimant: Mr D Williams

Respondent: Cool Shop Air Conditioning Ltd

Heard: Remotely by video

On: 19 August 2022

Before: Employment Judge S A Shore

REPRESENTATION:

Claimant: No Appearance

Respondent: Miss S Sodhi, Consultant

JUDGMENT AND REASONS

The judgment of the Tribunal is that:

1. The correct name of the respondent is Cool Shop Air Conditioning Ltd and the Tribunal's records shall be amended accordingly.
2. The claimant's complaints made within his Claim Form presented to the Employment Tribunal on 1 December 2021 are dismissed in their entirety because the Tribunal does not have jurisdiction to consider them pursuant to sections 18A(1) and (8) of the Employment Tribunals Act 1996.

REASONS

1. It was agreed that the claimant was employed by the respondent (who the claimant named as "Ron Lloyd – Coolstop" in his Claim Form) from 2 August 2021 to 8 November 2021.

2. The claimant presented a Claim Form (ET1) to the Tribunal on 1 December 2021 [pages 2-13 of the bundle]. At paragraph 2.3 of the ET1, the claimant indicated that he did not have an ACAS early conciliation certificate. His explanation was a tick in the box marked “My employer has already been in touch with ACAS”.
3. The Tribunal wrote to the claimant to ask about the ACAS certificate position and he supplied an early conciliation certificate that named “Cool Stop Ltd” as the prospective respondent. The date of receipt by ACAS of the early conciliation notification was 1 December 2021. The date of issue of the ACAS early conciliation certificate was 2 December 2021 [1].
4. On 1 February 2022, the Tribunal wrote to the claimant to indicate that his claim had been accepted, but only in respect of arrears of pay and notice pay.
5. The respondent submitted a Response Form that pointed out its correct name was “Coolstop Airconditioning Ltd” (sic) and raised an issue about whether the Tribunal had jurisdiction to hear the claimant’s claims [16-27].
6. The matter was then considered by EJ Anstis, who directed the Tribunal to write to the parties on 29 March 2022 [30-31], as there was no legal entity called “Coolstop Airconditioning Ltd” registered at Companies House. The parties were invited to write to the Tribunal and make representations about how the claims should proceed.
7. The respondent’s representative replied on 12 April 2022 [32] and gave the name of the respondent that I have accepted to be the correct one. The claimant’s response did not shed any further light on the matter.
8. By a letter dated 8 May 2022 [35], EJ Gumbiti-Zimuto then listed the case for a Public Preliminary Hearing (“PuPH”) to determine who the correct respondent was and whether any further parties should be added to the proceedings on 6 July 2022. That hearing was postponed to today.
9. At 14:56pm on 18 August 2022, the Tribunal emailed the parties with the joining details for today’s hearing. In an email timed at 15:53pm on 18 August, the claimant’s representative sent an email in reply that was copied to the respondent’s representative that simply said:

“I am unable to do tomorrow when originally fixed I confirmed the 19th august and 26th august as 2 dates I was unable to do”

The respondent’s representative replied by an email timed at 17:07pm on 18 August objecting to the postponement request and making an application to strike out the claimant’s claims.

10. I was asked to give directions on the matter this morning and I asked the Tribunal to write to the claimant’s representative in the following terms (I appreciate that the email from the claimant’s representative was sent on the evening before the hearing, not the morning of the hearing):

“Further to your email this morning confirming you are unable to attend the hearing this afternoon as this is one of your dates to avoid, please provide confirmation of your communication of this to the Tribunal, and confirm your

reasons for being unable to attend. Copies of relevant documents (such as notices of appointments, travel tickets etc) should be sent to the Tribunal or myself no later than 12.00 noon today.”

No reply was received from the claimant’s representative and no one appeared on behalf of the claimant at the hearing.

11. I asked the Tribunal to check the file and was told that the claimant’s representative had not advised that she was unable to attend a hearing on today’s date when the previous hearing was postponed.
12. I had read the bundle prepared by the respondent carefully. The circumstances outlined in the documents seemed to raise the same issues that had been dealt with by the Employment Appeal Tribunal in the case of **Miss J Pryce v Baxterstory Limited** [2022] EAT 61. In that case, the claimant had issued Employment Tribunal proceedings before she had obtained an ACAS early conciliation certificate. A few days later, she emailed the Tribunal enclosing an early conciliation certificate she had obtained in the meantime. The claims were later dismissed for lack of jurisdiction.
13. It is plain that the facts in this case, which are evident from the documents in the bundle are materially the same as the ones in this case:
 - 13.1. The claimant presented his ET on 1 December 2021;
 - 13.2. He represented that his employer had been in contact with ACAS, which was not the case;
 - 13.3. When challenged about the ACAS certificate, the claimant produced one that was dated the day after he had presented his ET1 to the Tribunal.
14. In the EAT’s decision in **Pryce**, the headnote summarised the position as follows:
 1. *The claimant’s email enclosing the certificate could not be considered as a “re-presentation” of the claim form since rule 8 of the ET procedure rules requires a claim to be presented by sending a completed ET1 to the tribunal, a requirement that cannot be waived; and*
 2. *(2) There was no jurisdiction to waive the requirement to re-present the claim since, if there was, it would undermine the express statutory provision in section 18A(8) of the ETA 1996.*
15. It is a mandatory requirement under Rule 10 that the Tribunal must reject an ET1 if it does not contain an early conciliation number; or confirmation that the claim does not institute any relevant proceedings; or that one of the early conciliation exceptions applies. The claimant’s ET1 contained none of the above.
16. I therefore found that it was in the interests of justice and in furtherance of the overriding objective to consider the matter for which the PuPH had been listed (the correct identity of the respondent and whether additional parties should be added) and the jurisdictional point raised by the early conciliation issue. I find that the

absence of the claimant or his representative made no difference to the outcome of the case. I have produced full reasons for my decision, as the claimant or his representative were not at the hearing. I find that the Tribunal does not have jurisdiction to hear the claimant's claims and they should all be struck out.

17. I have some empathy with the claimant's position, but as the matter is one of jurisdiction, I have no discretion in determining the point.
18. The hearing was conducted remotely by video with the agreement of the parties.

Employment Judge S A Shore

Date 19 August 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

8 September 2022

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