



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Ionita

**Respondent:** Sweet Home by Patrick Ltd

## RECONSIDERATION JUDGMENT

Upon reconsideration, the decision to accept the claim under rule 13(4) made on 18 November 2021 is revoked and the rejection of the claim stands. These proceedings are at an end.

## REASONS

1. The claim form in these proceedings was presented on 20 October 2021. The claimant brought claims of unfair dismissal, disability discrimination, and in respect of arrears of pay.
2. All of these claims require the claimant to provide a valid ACAS early conciliation certificate ("ECC") number.
3. No certificate number was provided. Instead, the claimant ticked the box claiming that he was exempt from the requirement to provide an ECC number because his complaint consisted only of a complaint of unfair dismissal containing an application for interim relief.
4. That exemption was not applicable because he brought claims other than the unfair dismissal complaint, and in the unfair dismissal claim no interim relief was sought (or could have been granted). The claim was rejected on 8 November 2021.
5. The claimant sought to rectify the defect by providing an ACAS certificate dated 12 November 2021.
6. On 18 November 2021 I decided that the defect had been rectified and the claim should be accepted under rule 13(4).
7. The claim therefore proceeded.
8. At a case management hearing on 1 September 2022, however, it became apparent that the decision to accept the claim may have been contrary to the rules because of a decision of the Employment Appeal Tribunal, **Pryce v Baxterstorey Ltd [2022] EAT 61**. In that case the EAT decided that the absence of an early

conciliation certificate where one was required was not a defect capable of rectification simply by providing a certificate later on; it was for the claim form to be presented afresh with the relevant details.

9. Although the decision in **Pryce** was issued on 9 December 2021, after my decision to accept the claim on 18 November 2021, the question of whether the Tribunal has jurisdiction over a claim under these provisions can be addressed at any time in the proceedings.

10. A letter was sent to the parties on 26 September 2022 explaining the position, and indicating that I would make a decision on the papers unless an oral hearing was requested. The respondent has requested an oral hearing on this point, but the claimant has made no such request.

11. Having considered the matter I am satisfied that I can deal with it without an oral hearing as my decision is that the Tribunal has no jurisdiction over this claim. I am satisfied that it is in the interests of justice for me to reconsider the decision to accept the claim as rectified as that was something which, with hindsight, it is clear I had no power to do. The **Pryce** decision is binding. As this goes to jurisdiction, I do not regard it as a matter which can be overlooked.

12. As a result the decision to accept is now revoked and the claim stands rejected under rule 12(1)(d) because of a failure to provide early conciliation details.

13. It is open to the claimant to present the claim once again with his ECC number. That new claim will be out of time and whether time is to be extended to allow that new claim to proceed is something which will have to be determined on another occasion. The claimant should be aware that any delay in presenting a new claim could count against him.

Regional Employment Judge Franey  
18 October 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
10 November 2022

FOR THE TRIBUNAL OFFICE

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