



EMPLOYMENT TRIBUNAL S

PUBLIC PRELIMINARY HEARING

Claimant: Ms L Hamp

Respondent: Learning Disability Network London Limited

Heard at: London Central in person On: 29th September 2022

Before: E J B McKenna

Representation

Claimant: In person assisted by Serb/Croatian interpreter, Ms N Davis

Respondent: Ms K Moss, Counsel

JUDGMENT AND REASONS

The Claimant's claim made on 4th August 2020 is dismissed because the Tribunal does not have jurisdiction to consider it pursuant to Sections 18A(1) and (8) of the Employment Tribunal s Act 1996.

REASONS

1. By a claim form received on 4th August 2020, the Claimant filed complaints of unfair dismissal, race discrimination and a claim for unpaid wages. The claim form did not contain an ACAS early conciliation certificate number.
2. She was employed by the Respondent as a support worker from 13th January 2020 to 17th June 2020. The Respondent provides services for people with learning disabilities. The Claimant unsuccessfully appealed her dismissal. An appeal hearing on 25th August 2020 upheld her dismissal. The Respondent says that the Claimant was dismissed for failing her probation period and that her dismissal followed a formal warning on 31st March 2020 that if her performance did not improve that she would be dismissed. The Claimant disputes this and

says that she was dismissed because she was wrongly accused of speaking a language other than English at work.

3. On 5th August 2020, that is the day after submission of her claim form, the Claimant obtained an early conciliation certificate from ACAS.
4. On 15th September 2020, the Employment Tribunal rejected the complaints under Rule 12(1)(c) of the Employment Tribunal Rules of Procedure as the Claimant had failed to complete the mandatory ACAS pre claim conciliation process and to provide an early conciliation number as required by s.18A(8) of the Employment Tribunal Act 1996 or to provide confirmation that one of the early conciliation exemption applied.
5. The Claimant appealed the Employment Tribunal's decision on 8th October 2021. Her notice of appeal stated that the certificate "came to me with a delay of several days."
6. HHJ Auerbach considered her application on 5th February 2021. He stayed the appeal to enable the Claimant to seek reconsideration of the Employment Tribunal's decision.
7. On 17th April 2021, the Claimant applied to the Employment Tribunal for reconsideration. She enclosed a copy of the early conciliation certificate and stated, "I am still under therapy and completely incapable of conducting the procedure." Her application was received by the Employment Tribunal on 20th April 2021.
8. In the event, the Employment Tribunal was unable to locate her application and was prompted to seek a fresh copy on 20th May 2021 by an enquiry from the Claimant.
9. Her claim was eventually treated as received by the Employment Tribunal on 28th June 2021. The Regional Employment Judge noted that as she "did not work for the Respondent for two years and... it is unlikely that the unfair dismissal claim can go ahead."
10. The claim was then accepted after reconsideration as "the defect which led to rejection has since been rectified" and the claim form was "to be treated as having been received on 17th April 2021".
11. On 13th July 2021, the Respondent submitted its response form which contended that the claim was out of time. It made an application for a strike out and/or deposit orders on 24th September 2021 on two grounds. First, it argued that the claims were time barred. In the second place, it said that the Claimant lacked the necessary service to bring a complaint of unfair dismissal having only been employed for 5 months and 3 days.
12. A Preliminary hearing listed for 7th October 2021 was postponed due to an error in booking the correct interpreter. The hearing was relisted for 2nd December 2021. That hearing had to be postponed due to the non-availability of the Respondent's Counsel.

13. On 6th July 2021, the Respondent submitted a revised list of issues which asked the Employment Tribunal to consider a number of preliminary issues relating to jurisdiction including:

“Given that the Claimant presenting the early conciliation certificate on 17th April 2021 (received by the Employment Tribunal on 20th April 2021, having presented the ET1 form on 4th August 2020) could not be considered as a “re -presentation” of the claim form, in accordance with Rule 8 of the ET rules, s.18A(8) of the Employment Tribunal s Act 1996 and ***Pryce v Baxterstorey [2022] EAT 61***, does the Tribunal have jurisdiction to hear the claims?”

14. A copy of the revised draft list of issues and the ***Pryce*** decision was sent to the Claimant.
15. A preliminary case management hearing took place on 21st July 2022 before Employment Judge Spencer. The claims were listed for a further open preliminary hearing to consider:
- a. In the light of ***Pryce v Baxterstorey [2022] EAT 61***, Rule 8 of the ET Rules 2013, s.18A(8) of the Employment Tribunal s Act 1996, has a valid claim being presented and/or does the Tribunal have jurisdiction to hear the claims?”
 - b. If so, in the light of the applicable time limits, Tribunal have jurisdiction to consider the Claimants claims? Was the claim presented in time and, in particular is it just and equitable to allow the claim to be brought within the extended time limit in in s.123(1)(b) of the Equality Act 2010.
 - c. If the Claimant’s claims are not struck out because the Tribunal has no power to consider them, the Employment Judge may, if he or she considers it appropriate to do so, consider an application by the Respondent for the Claimant to pay a deposit because all or any part of her claim has little reasonable prospect of success.
16. Employment Judge Spencer advised the Claimant to read the ***Pryce*** decision and to obtain legal advice so that she could properly respond to the applications to be considered at the preliminary hearing.

17. At the same hearing, the Claimant’s complaint of unfair dismissal was dismissed upon withdrawal her having accepted that she had less than two years’ qualifying Employment and therefore did not have the right not to be unfairly dismissed.

Submissions at today’s hearing

18. At today's hearing, I heard submissions from Counsel for the Respondent. Counsel referred to ***Pryce v Baxterstorey [2022] EAT 61***. She did so in understandable language for the benefit of the Claimant.

19. The Claimant invited me to place weight on the facts that she was psychologically unwell, that English was not her first language and that she lacked legal knowledge.

Relevant law

20. Section 18A(1) of the Employment Tribunals Act 1996 states as follows:

“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 the matter”

21. Section 18A(8) provides that:

“A person who is subject to the requirement in sub section (1) may not present an application to institute relevant proceedings without a certificate ...”

22. Rule 8(1) of the Employment Tribunal Rules says that:

“ A claim shall be started by presenting a completed claim form (using a prescribed form)[the ET1 form] in accordance with any practice direction.

23. The relevant practice direction requires a claim form to be presented to the Tribunal in one of three ways: online, by post or in person.

24. In ***Pryce v Baxterstorey***, the Claimant, Ms Pryce, also issued Employment Tribunal proceedings before she had obtained an ACAS early conciliation certificate. Four days later, she emailed the Tribunal sending a copy of an early conciliation certificate and asking that the number be added to her claim form. The claim was dismissed for lack of jurisdiction.

Discussion and conclusion

25. HHJ Shanks held that Ms Pryce’s request that the Tribunal add the early conciliation certificate number to her claim form could not be considered a representation of her Claim. He also stated that an error of this kind cannot be waived by the ET or the Respondent. The only way in which Ms Pryce could have rectified her error was to start again using the standard claim form after the early conciliation certificate had been obtained. The Rules which allow a Claimant to rectify certain errors on a claim form such as the parties’ names or the certificate number, namely Rules 12 and 13, does not apply to the failure to obtain the early conciliation certificate; paragraph 14. .

26. Counsel for the Respondent invited me to consider that what Ms Pryce’s action was very similar to what the Claimant did on the 17th of April 2021. Rather than asking the Tribunal to add the early

conciliation certificate number to the claim form as Ms Pryce did, Ms Hamp merely asked the Tribunal to reconsider her claim and enclosed only a copy of the early conciliation certificate.

27. I find that the Claimant's circumstances are indistinguishable from those in **Pryce v Baxterstorey**. As I have no discretion to waive the Claimant's breach of s.18A, the relevant rule and the practice direction, it follows that I have no choice but to dismiss her claim for want of jurisdiction. As her claim was not validly presented, it cannot go ahead.
28. I appreciate that this will come as a disappointment to the Claimant but I have no discretion to permit her claim to proceed.

Employment Judge McKenna

Date 9th November 2022

JUDGMENT SENT TO THE PARTIES ON

10/11/2022

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to Employment Tribunal decisions

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