



EMPLOYMENT TRIBUNALS

Claimant: Mr. M Thompson
Respondent: First Home Improvements (England) Ltd

JUDGMENT

The respondent's application dated 3 November 2022 for reconsideration of the decision sent to the parties on 24 October 2022 is refused.

REASONS

- 1 In this decision when I refer to 'the current respondent' I am referring to the company named First Home Improvements (England) Ltd whose registered office address is 1 Station Road Industrial Estate, Lenwade, Norfolk, NR9 5LY.
- 2 When I refer to 'the initial respondent' I am referring to the company named First Home Improvements whose registered office address is Unit 10 Seaway Drive, Wales, SA12 7BR.

Summary of reasons

- 3 There is no reasonable prospect of the original decision being varied or revoked.
- 4 Respondent' is defined in rule 1(1) as 'the person or persons against whom the claim is made'. The person against whom this claim was made was the initial respondent. Rule 10 requires that a claim form be rejected if it does not contain each 'respondent's' name and address. The claim form contained the initial respondent's name and address. The minimum information was therefore supplied and was accurate.
- 5 The current respondent submits that pursuant to **Sterling v United Learning Trust** the information given under rule 10 must be accurate in order for the requirements of rule 10 to be satisfied. Even if that is a correct statement of the law it would make no difference to my conclusion, because the

information provided was accurate.

- 6 Rule 10 does not deal with the situation where a claim is brought against the wrong person. Neither rule 10 nor rule 12 provide for a claim form to be rejected where the respondent on the claim form is the same as the prospective respondent on the EC certificate, but the claimant intended to bring a claim against a different person. That would be unworkable. It would require 'respondent' in rule 10 to be read as 'the person the claimant intended to bring a claim against.' This depends on the subjective intention of the claimant.
- 7 In reaching my original conclusion I correctly applied the relevant law to the facts and reached the decision as explained in my oral reasons. I have considered the points raised by the current respondent and none of them demonstrate any arguable error of law or other reason which might give rise to a reasonable prospect of the decision being varied or revoked.

Introduction

- 8 The decision challenged by the current respondent is my decision not to reject the claim under rule 10 of the Employment Tribunals Rules of Procedure 2013 for a failure to supply minimum information.
- 9 For the purposes of this reconsideration I assume that the decision not to reject the claim amounts to a 'judgment' and can therefore be reconsidered.

Relevant background

- 10 The current respondent is a home improvement business. The claimant asserts that he was employed by the current respondent as a Sales Representative and then a Branch and Sales Manager with continuous employment from 1 August 2018 to 1 March 2021. The current respondent asserts that the claimant was engaged as a self-employed sales agent from 31 July 2017 to 1 March 2021, with a break in the provision of services in August 2018.
- 11 The current respondent's name is First Home Improvements (England) Ltd. Its business address is 1 Station Road Industrial Estate, Lenwade, Norfolk, NR9 5LY.
- 12 On 10 May 2021 the claimant, acting through solicitors, made contact with the Advisory, Conciliation and Arbitration Service (ACAS) and entered the early conciliation (EC) process. On the same date ACAS issued an EC certificate. The certificate named the prospective respondent as 'First Home Improvements' and gives the prospective respondent's address as Unit 10 Seaway Drive, Wales, SA12 7BR.
- 13 On 10 May 2021 the claimant, acting through the same solicitors, presented a claim form to the employment tribunal, making claims of unfair dismissal, disability discrimination and unpaid notice pay and holiday pay. At box 2.3 of the claim form the ACAS early conciliation number is provided. At box 2.1 the respondent is named as 'First Home Improvements' with an address of "Unit 10 Seaway Drive, Seaway Drive Industrail [sic] Estate, Wales, Talbot [sic],

SA12 7BR.

- 14 There was a company called First Home Improvements Limited with that address in Seaway Drive. The claim form was served on that company. On 20 January 2022 the claim was resent to the current respondent at its correct address.
- 15 The current respondent filed grounds of resistance dated 15 February 2022 in which it asserted, inter alia, that no valid claim has been made against it. It stated at para 3.1.9, 'Despite the typographical errors in the address given for the stated respondent, it is clear that the claim was made against First Home Improvements Limited rather than the Respondent.'
- 16 A preliminary hearing was listed for 29 April 2022. It was postponed and relisted on 5 October 2022.
- 17 The preliminary hearing was conducted remotely by CVP on 5 October 2022. I converted the hearing to a public preliminary hearing at the start of the hearing.
- 18 At that hearing I determined that it was not mandatory to reject the claim under rule 10. The current respondent applied for a reconsideration of that decision by email dated 3 November 2022.

The law

- 19 Rule 10 and rule 12 of the Employment Tribunal Procedural Rules 2013 (as amended) provide as follows:

10 Rejection: form not used or failure to supply minimum information

10.—(1) The Tribunal shall reject a claim if—

- (a) it is not made on a prescribed form;
- (b) it does not contain all of the following information—
 - (i) each claimant's name;
 - (ii) each claimant's address;
 - (iii) each respondent's name;
 - (iv) each respondent's address; or
- (c) it does not contain one of the following—
 - (i) an early conciliation number;
 - (ii) confirmation that the claim does not institute any relevant proceedings; or
 - (iii) confirmation that one of the early conciliation exemptions applies.

(2) The form shall be returned to the claimant with a notice of rejection explaining why it has been rejected. The notice shall contain information about how to apply for a reconsideration of the rejection.

12.— Rejection: substantive defects

- (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;
- (b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process;
- (c) one which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies;
- (d) one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;
- (da) one which institutes relevant proceedings and the early conciliation number on the claim form is not the same as the early conciliation number on the early conciliation certificate;
- (e). one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates; or
- (f) one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate to which the early conciliation number relates.

(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), (b), (c) or (d) of paragraph (1).

(2ZA) The claim shall be rejected if the Judge considers that the claim is of a kind described in sub-paragraph (da) of paragraph (1) unless the Judge considers that the claimant made an error in relation to an early conciliation number and it would not be in the interests of justice to reject the claim.

(2A) 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-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made an error in relation to a name or address and it would not be in the interests of justice to reject the claim.

(3). If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the Judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.

20 Rule 12(1)(da) and rule 12(2ZA) were introduced into rule 12 by regulation 7 of the Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2020 ('2020 Regulations').

21 Rejection under rule 10 is mandatory. Unlike rule 12(1)(f), where the name of the respondent on the claim form is not the same as the name of the prospective respondent on the EC certificate, there is no interests of justice 'rescue provision' for an error in relation to a name or an address under rule

10.

The respondent's application for reconsideration

22 It is not in dispute that:

- 22.1 'First Home Improvements' is a company entirely unrelated to the current respondent, albeit that it has a very similar name.
- 22.2 'First Home Improvements' was not a company against whom the claimant intended to bring an employment tribunal claim.
- 22.3 The claimant's representative had mistakenly put the name and address of a different company on the claim form.

23 The reasons for my decision are briefly but accurately summarised in the current respondent's application. In essence I decided that the claim did contain the minimum information i.e. the respondent's name and address and therefore was not subject to the mandatory rejection under rule 10. The fact that the claimant had not intended to bring a claim against that respondent did not matter. I then proceeded to consider the claimant's application to amend the claim form to substitute the current respondent, against whom the claimant had intended to bring a claim, applying the usual principles. I allowed that amendment for the reasons given orally in the preliminary hearing.

24 The current respondent submits that this decision was wrong because:

- 24.1 Pursuant to **Sterling v United Learning Trust**, the information given under rule 10 must be accurate in order for requirements of rule 10 to be satisfied. The mandatory requirements of rule 10 have no meaning if any misstatement is taken to be sufficient. The core purpose of rule 10 is to require a claimant to set out who they are, who they are claiming against, and to verify that they have engaged with early conciliation. This basic information enables the claim to proceed promptly. In this case, the Claimant's failure to correctly identify the right respondent defeated the purpose of rule 10. Indeed, the Claimant's failure in this case was much starker than the claimant's failure in Sterling, where the early conciliation number on the claim form was incorrect by only two digits. In this case, the Claimant filed against a different company.
- 24.2 Pursuant to **E.ON Control Solutions Ltd v Caspall**, the tribunal needs to engage first with whether the claim has been validly presented, and only if it has consider amendment under case management powers. Accordingly, the prospect that a new respondent could be substituted under case management powers later in proceedings has no bearing upon whether a claim should be rejected. It is not permissible to conflate the two issues.
- 24.3 Pursuant to **E.ON Control Solutions Ltd v Caspall** and **Cranwell v Cullen**, as the mandatory information required under rule 10 was not provided, the claim now ought to be rejected.

Discussion and Conclusions

- 25 In relation to the submissions made in 24.2 and 24.3 I was aware of the law as set out by the current respondent in those paragraphs and I applied it correctly to the facts.
- 26 Although neither party cited **E.ON Control Solutions Ltd v Caspall**, I drew it to the parties' attention in the hearing and took account of the points in 24.2 and 24.3 when reaching my decision.
- 27 I explicitly stated in my oral reasons that the current respondent was right that I should first consider the question of whether the claim should be rejected, because of the case of **E.ON**. I stated that it was mandatory to reject a claim under rule 10 at any stage of the proceedings if it did not contain the minimum information and that there was no discretion to override the mandatory rejection. I stated that if it was mandatory to reject the claim under rule 10, then I could not amend the claim.
- 28 I then went on to determine that it was not mandatory to reject the claim under rule 10 because it contained the minimum information required in 10(a)(iii) and (iv). I did this before determining the application to amend.
- 29 There is no reasonable prospect of the decision being varied or revoked on the basis of 24.2 because I adopted the correct approach and did not conflate the two issues.
- 30 I proceeded on the basis that *if* the mandatory information had not been provided the claim ought to be rejected as set out in the authorities referred to in 24.3. I determined that the mandatory information had been provided. There is no reasonable prospect of the decision being varied or revoked on the basis of 24.3.
- 31 In relation to 24.1, the submission based on **Sterling v United Learning Trust** (UKEAT/0429/14/DM) was not made at the preliminary hearing. I have considered whether there is any reasonable prospect of the decision being varied or revoked on the basis of that submission.
- 32 The current respondent argues that the information given under rule 10 must be accurate in order for the requirements of rule 10 to be satisfied, otherwise the mandatory requirements have no meaning.
- 33 In **Sterling** the tribunal found, on the balance of probabilities, that the claim form as originally submitted did not contain a valid ACAS early conciliation number required under rule 10(1)(c)(i). It made this finding on the basis that the number written on the form had two digits missing.
- 34 The relevant paragraph in the EAT's decision is para 22:

22. Once it is accepted that the Tribunal was entitled to think that the form did have a couple of digits missing, the question is whether the Tribunal was then obliged to reject the form. The wording of Rule 10 was not significantly in issue before me. Where the rule requires an early conciliation number to be set out, it is implicit that that number is an accurate number. The Tribunal had found it was not. Once that appeared to be the case, the Tribunal was obliged to reject it, and that rejection would stand, subject only to reconsideration, which here was not asked for.

- 35 I accept that under **Sterling** Langstaff J held that it was implicit in rule 10 that the EC number should be an accurate number, albeit that the wording of rule 10 was not 'significantly in issue' in **Sterling**. Mrs Justice Simler also applied this approach in **Adams v British Telecommunications PLC** [UKEAT/0342/15/LA] at para 9.
- 36 There is a short and simple explanation for why I have concluded that there are no reasonable prospects of the decision being varied or revoked on the basis of **Sterling**.
- 37 'Respondent' is defined in rule 1(1) as 'the person or persons against whom the claim is made'. The person against whom this claim was made was the initial respondent. Rule 10 requires that a claim form be rejected if it does not contain each 'respondent's' name and address. The claim form contained the initial respondent's correct name and correct address. The minimum information was therefore supplied and was accurate.
- 38 Rule 10 does not deal with the situation where a claim is brought against the wrong person. Neither rule 10 nor rule 12 provide for a claim form to be rejected where the respondent on the claim form is the same as the prospective respondent on the EC certificate, but the claimant intended to bring a claim against a different person. That would be unworkable. It would require 'respondent' in rule 10 to be read as 'the person the claimant intended to bring a claim against.' This is not how respondent is defined in the rules. Further it would require findings on the intention of the claimant, which is entirely unsuited to rule 10 which provides for mandatory rejection at an early stage in the proceedings without reference to a judge and without a rescue provision.

Note

- 39 That is sufficient for me to dispose of this application and my operative reasoning is set out above. However, I have proceeded above on the basis that the current respondent is right in its assertion that pursuant to **Sterling**, the information given under rule 10 has to be 'accurate'.
- 40 In my view **Sterling** does not hold that it is implicit in rule 10(1)(b)(i) and (ii) that the name and address should be accurate and there are good reasons why the finding in **Sterling** relation to rule 10(1)(c)(i) should not be read across to rule 10(1)(b)(i) and (ii).
- 41 Rule 10 deals with situations where a claim form does not contain certain basic minimum information. It is intended to be and in most cases is operated without reference to a judge. It is intended to be and in most cases is operated at an early stage of the proceedings and on the basis of the claim form alone. It is mandatory to reject a claim if the minimum information is not supplied. It is not an exercise of discretion. There is no 'rescue provision' in the interests of justice.
- 42 Although it is intended to be operated at an early stage in the proceedings when the claim form is filed, it remains mandatory to reject the claim form at any stage in the proceedings if the minimum information has not been supplied. This may occur after the primary time limit has expired and even if the defect is then corrected there is no guarantee that time limits will be

extended on the grounds of reasonable practicability or on just and equitable grounds.

- 43 Rule 12 deals with substantive defects. Under rule 12 the claim form is referred to an employment judge to make the decision. The decisions to be taken are those that might require an exercise of judgment, for example whether a claim is in a form that cannot sensibly be responded to.
- 44 Errors in relation to names and addresses are specifically dealt with in rule 12 and are subject to a rescue provision. Where the name of the claimant or respondent on the claim form is not the same as the prospective claimant or respondent on the EC certificate, the claim will not be rejected if a judge considers that the claimant made an error in relation to a name or address and it would not be in the interests of justice to reject the claim.
- 45 Why is there a difference in the process under rule 10 and rule 12? If the minimum information has not been provided, this should be obvious on the face of the claim form. There should be no need to form a judgment as to whether that information has or has not been provided. In contrast, the issues under rule 12 are likely to require a judgment to be made as to whether the requirements have been satisfied. Further, the availability in some situations of a rescue provision requires the exercise of a judgment.
- 46 This background is important when considering whether the respondent's submission that pursuant to **Sterling** the name and address have to be 'accurate' in order for the requirements of rule 10 to be satisfied.
- 47 The appellate authority on this point relates to an accurate early conciliation number, not to an accurate name or address. It is therefore not binding in relation to the interpretation rule 10(1)(b)(i) or (ii).
- 48 In my view there are good reasons why the implicit requirement that the EC number should be accurate should not be read across to rule 10(1)(b)(i) or (ii).
- 49 First, the requirement that an EC number be 'accurate' is qualitatively different to a requirement that a name or address be 'accurate'. Second, a system where it was mandatory to reject claims where the name of the respondent was 'inaccurate' albeit the same as the name on the EC certificate would be unworkable.
- 50 In **Sterling** the number was not 'accurate' in the sense that the claimant had missed off a couple of digits. That number was no longer a valid early conciliation number. This would have been obvious to the administrative staff looking at the claim form, without any need for further enquiry, because the number would have been too short.
- 51 The early conciliation number might also not be 'accurate' in the sense that the EC number on the claim form might be a valid EC number, but not one that related to this claimant or this respondent (see para 40 of **E.ON**). This would be not be obvious on the face of the claim form, but should be obvious

when the claim form is compared with the EC certificate.

- 52 At the time that **Sterling** and **E.ON** were decided, it did not matter whether these cases were dealt with under rule 10 or rule 12, because rejection was mandatory under either provision. At that time rules 12(1)(da) and 12(2ZA) had not been introduced.
- 53 Now that there is a rescue provision in rule 12(2ZA), if the early conciliation number on the claim form differs from the early conciliation number on the certificate, in my view this must be considered under rule 12, not rule 10, otherwise the claimant is deprived of the benefit of the rescue provision.
- 54 It is straightforward for a claimant to include an accurate EC number. It is simply a matter of transcribing the number correctly from the EC certificate. Similarly it is usually straightforward for the tribunal to determine whether the EC number in the claim form is accurate, by looking at the EC certificate.
- 55 It is not always so straightforward for a claimant to include an accurate name for the respondent. The respondent may have a trading name. It may include the word 'plc' or 'limited'. The identity of the employer may be unclear. Nor is it always so straightforward for the tribunal to determine whether the name on the claim form is 'accurate', particularly at the stage in proceedings at which rule 10 is intended to operate.
- 56 Further, if an inaccurate EC number is included in the claim form as a result of an error, the rescue provision in rule 12(2ZA) will almost always be (at least potentially) available. This is because in almost all cases the inaccurate number on the claim form will, by definition, differ from that on the EC certificate. The claimant does not provide the number for the purposes of the certificate – it is generated by ACAS - so it is not possible for the same mistake to be made by the claimant on the certificate.
- 57 In the case of names and addresses, the claimant provides the name and address to ACAS and therefore it is quite common that the same mistake is made on the claim form and on the EC certificate. In those circumstances the rescue provision under rule 12(2A) is not available.
- 58 The name of the respondent might not be 'accurate' because it is misspelt or because the claimant has omitted 'ltd' or plc' on both the claim form and the EC certificate. The fact that a name has been misspelt will not, unlike an incomplete EC number, be obvious to staff looking at the claim form, particularly if it is spelt in the same way on the EC certificate.
- 59 It is not unusual that a claimant will get the respondent's name wrong in this way, and it is usually dealt with by substitution of the correct respondent, usually by consent. This approach would no longer be possible if, as the respondent submits, the name had to be 'accurate' in order for the requirements of rule 10 to be satisfied, because the claim form would have to be rejected under rule 10.
- 60 It is inconceivable that rule 10 is intended to require mandatory rejection of a claim form, with no reference to a judge, and with no rescue provision where a claimant has misspelt or omitted 'plc' or 'ltd' from the name of the

respondent.

- 61 This claim is slightly different. In this case the same company is named in the early conciliation certificate and the claim form but the claimant had intended to bring the claim against a different company. The 'inaccuracy' is not obvious on the face of the claim form or EC certificate. It is only apparent once the tribunal is aware of or has made findings on the claimant's subjective intention. As I set out in my reasons above, it would be unworkable to have the claimant's intention as a ground for mandatory rejection of a claim form under rule 10.

Employment Judge **Buckley**

Date 7 November 2022