

**Case Numbers: 2303303/2020; 2303304/2020; 2303305/2020; 2303306/2020;
2303307/2020; 2303308/2020; 2303309/2020; 2303310/2020; 2303311/2020;
2303312/2020; 2303313/2020; 2303314/2020; 2303315/2020**



EMPLOYMENT TRIBUNALS

Claimants: Mr A Soares and others

Respondent: Serco Limited

Heard on: 8 December 2022

Before: Employment Judge Pritchard

Representation

Claimants: Mr A Soares in person and on behalf of all claimants

Respondent: Dr M Ahmad, counsel

DECISION UPON RECONSIDERATION

The reserved judgment of the Tribunal dated 15 October 2021 is revoked on the Tribunal's own initiative under Rules 72 and 73.

REASONS

1. For the reasons set out in my Reserved Judgment of 15 October 2021, the claims of the additional claimants were rejected under Rule 10(2). A notice of rejection was sent to the Claimant on 19 October 2021.
2. On 20 October 2021, the Claimant applied for reconsideration of the rejection decision and set out the names and addresses of the additional claimants in his letter.
3. Upon my instructions, by letter dated 2 November 2022 the Tribunal informed the Claimant that the claim still could not be accepted in respect of the additional claimants because, as the ET1 claim form still did not include their names and addresses, the defect had not been rectified. I extended time under rule 5 for the Claimant to renew his application for reconsideration with such application to be made no later than 14 days from the date of the letter.
4. The Claimant renewed the application on 10 November 2022, attaching to his email the ET1 Form which he had amended to include, among other things, the names and addresses of the additional claimants. Accordingly, I accepted claims of the additional claimants with effect from 10 November 2021 under Rule 13(4).

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5. This deemed date of acceptance gave rise to time limit issues for the additional claimants.
6. The case came before Employment Judge L Burge on 26 April 2022. Her case management orders note what took place and will not be repeated here save for the following at paragraph 8:

On 17 December 2021 Employment Judge Hyams-Parish found out that Mr Soares had in fact included the names and addresses of the additional claimants in his original claim

7. Employment Judge L Burge issues a further case management order on 21 July 2022. Again, it will not be repeated here save for the following at paragraph 5:

The Tribunal has confirmed unequivocally that the additional claimants' names and details were presented to the Tribunal when the original claim was entered on 7 August 2020. This will be taken into account by the Employment Judge when deciding on time limits/jurisdiction at the Preliminary Hearing on 30 August 2022.

8. The case came before Employment Judge Lang for a preliminary hearing on 30 August 2022 when he was able to show the Respondent a copy of an ET1a Form marked as follows:

ET1a – Online Application to an Employment Tribunal

For Office Use

Received at ET: 07/08/2020

The form contains an online submission reference and was further marked *Formversion: 2*. The form contains the following:

The following claimants are represented by (if applicable) and the relevant required information for all the additional claimants is the same as stated in the main claim of Aldo Soares v Serco Limited

9. Headings appear above the listed names and addresses of each claimant in the case as follows:

Section et1a: claim

10. The Respondent wished to consider its position and Employment Judge Lang ordered that there would be a further preliminary hearing to consider:

... whether the decision of EJ Pritchard on 15 October 2021 should be reconsidered for a second time pursuant to Rule 73 or 13 (which appears may be permissible pursuant to Leicester City Council v Patel [2022] EAT 109 ...

11. The Respondent had been given the opportunity by Employment Judge Lang to ask questions of the Tribunal administration about the form but regrettably they did not provide answers to the questions asked.

12. The preliminary hearing came on before me today. The Respondent continued to show concern as to the provenance of the ET1a form referred to above. The Respondent also suggested that the Claimant had not been truthful about having typed the names and addresses of all the Claimants onto the original application in August 2020.

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13. An ET1a form is a prescribed form. Although the form referred to above does not appear exactly as shown on GOV.UK website, in particular, it does not show the boxes into which the information must be put, I am satisfied that it is an office printout version of an ET1a, not least because the format/sequence of details is identical.
14. I do not disbelieve the Claimant. He has been consistent throughout: he had included the names and addresses of all claimants on the original ET1 form he submitted online but they did not appear on the version provided to him by the Tribunal.
15. The further ET1 form which was referred to at the preliminary hearing which includes the names and addresses of the additional claimants, together with further details, is the amended form which the Claimant sent to the Tribunal on 10 November 2021 and which led to me accepting the claims with effect from that date. I have now had the opportunity to check my email inbox and I confirm that is the case.
16. Having now seen the ET1a form referred above, which shows it was received by the Tribunal on 7 August 2020 and includes the names and addresses of all the claimants, and having heard from Mr Soares again that he did indeed enter the names and address of all the claimants on the online application he submitted on 7 August 2020, and having had regard to the findings of other Employment Judges referred to above, in particular as recorded by Employment Judge L Burge at paragraph 5 of her case management order, I am satisfied that the claims of all claimants in this multiple were presented and validly instituted on 7 August 2020.
17. In Leicester City Council v Patel [2022] EAT 109 Mrs Justice Eady, President, made clear that a reconsideration decision under Rule 13 is a case management order.
18. Rule 29 provides that a case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice.
19. In Leicester City Council it was said that an ET can revisit an earlier case management order where there had been a material change of circumstance, or where the order had been based on a material omission or mistreatment or there was some other substantive reason necessitating such interference.
20. The Respondent submits that it will suffer prejudice if the reconsideration decision is set aside. However, if I do not set aside my previous decisions, the claimants are likely to be prevented from pursuing their claims (subject to time points possibly being found in their favour) because of an administrative error, namely, the failure of the Tribunal administration to not bring to my attention at relevant times the fact that the ET1a form was in existence. The balance of prejudice falls overwhelmingly in the claimants' favour.
21. It is undoubtedly in the interests of justice to set aside my previous decisions and the circumstances give rise to a substantive reason for such interference (and may also fit into one or more of the other categories referred to in Leicester City Council above).
22. For these reasons my previous decisions are set aside.

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23. For the same reasons my reserved judgment of 15 October 2021 is revoked. It is necessary in the interests of justice to do so.

Employment Judge Pritchard
Date: 9 December 2022

Sent to the parties on
Date: 12 December 2022

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.