



THE EMPLOYMENT TRIBUNAL

Claimant **Respondent**
Mr A Rashidi-Khaki **Governing Body of Garratt Park School**

v

Heard at: London South Employment Tribunal by CVP
On: 22 February 2023

Before: Employment Judge Martin

Appearances

For the Claimant: Mr Callaghan - Counsel
For the Respondent: Mr Cameron – Case Worker

JUDGMENT AT PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The Governing Body of Garratt Park School is added as a Respondent
2. The London Borough of Wandsworth is dismissed as a Respondent.

REASONS

1. Written reasons were requested by Wandsworth Borough Council.
2. The Claimant presented a claim against Wandsworth Borough Council. The Claimant worked for Garratt Park School. By virtue of article 3 of the Education (Modification of Enactments Relating to Employment) (England) Order 2003 the school and not the local authority was legally responsible for all staff and staffing matters including conduct, discipline and grievances.
3. It was accepted that the Claimant's contract of employment and most likely his payslips had Wandsworth Borough Council as the employer. It was not therefore surprising that proceedings were presented against it having followed the correct ACAS early conciliation procedure.

4. In its response Wandsworth Borough Council pointed out that it was not the correct employer, and the correct employer was the Governing Body of Garratt Park School. It was said that the proceedings were incorrectly instated and that there was no ACAS early conciliation certificate for the school.
5. There was communication between the parties leading to the Claimant obtaining an early conciliation certificate for the school, and presenting a claim form to the Tribunal on 24 January 2023 which repeated the matters in this claim but with the school as the Respondent. The claim number for this second claim is 2300010/2023 (the 2023 claim).
6. The 2023 claim is out of time. The 2022 claim is not. I find it entirely understandable why the Claimant initially presented a claim against Wandsworth Borough Council given what his contract and payslips say.
7. Mr Cameron argued that the proceedings had been improperly instituted against Wandsworth Borough Council and should therefore be dismissed. He argued that it was not possible to substitute Garratt Park School as a Respondent as there was no ACAS certificate for it when the 2022 claim was presented.
8. I disagreed with these arguments. Rule 34 of the Employment Tribunal Rules of Procedure 2013 (the rules) confer a wide discretion on Employment Tribunals to add, substitute and/or remove parties to proceedings. This can be done on its own initiative or on the application of a party.

Addition, substitution, and removal of parties

34. The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included.

Case management orders

29. The Tribunal may at any stage of the proceedings, on its own initiative or on application, make a case management order. [Subject to rule 30A(2) and (3) the]1 particular powers identified in the following rules do not restrict that general power. A case management order may vary, suspend, or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.

9. The same principles apply to adding, removing, or substituting parties that apply to other types of amendment and the principles set out in **Selkent Bus Company Ltd v Moore 1996** ICR 836 EAT apply. The core test is the balance of hardship as described in **Vaughan v Modality Partnership 2021** ICR 535 EAT.
10. Given that it was understandable that the Claimant brought proceedings

against Wandsworth Borough Council given the name on his contract and payslips, and given that the hearing will not take place until March 2024 I consider that the mistake the Claimant made was a technical one. It is not the case that there was doubt about who the Claimant intended to include as a Respondent. It was the school he worked for.

11. If a substitution is not made in this case then it may be that the Claimant is deprived of the opportunity to have his claim heard given that the 2023 claim form is substantially out of time. Given the circumstances of this case, and the early stage in the proceedings there is no prejudice to Garrett Park School if it is added as a Respondent now. It is in the interests of justice for this to be done.
12. The final argument put forward by Mr Cameron is that there was no ACAS certificate when the 2022 claim form was presented for Garrett Park School. The ACAS early conciliation provisions relate to a certificate being available when proceedings are instituted i.e., when the ET1 Claim Form is presented. There is no requirement for an early conciliation certificate once proceedings have been instituted.

Employment Tribunals Act 1996

18A Requirement to contact ACAS before instituting proceedings

- (1) 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 that matter. This is subject to subsection (7).
13. Here proceedings have been instituted so no early conciliation certificate is required.
 14. I therefore substituted The Governing Body of Garratt Park School as the Respondent in this case and formally dismissed Wandsworth Borough Council. I also dismissed the 2023 claim as it is a duplicate of the 2022 claim. A separate order has been made in respect of the 2023 claim.

Employment Judge Martin
Date: 22 February 2023