



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Taffs (1)  
Mrs K Tucker (2)

**Respondents:** Mr K Johnson

**Heard at:** Southampton                      **On:** 24 February 2023

**Before:** Employment Judge Self

## Appearances

For the Claimant: In Person

For Respondent : No Attendance and No Appearance entered

## JUDGMENT

1. The Claimant (1)'s claim for unlawful deduction of wages and failure to pay the minimum wage is postponed until 10 a.m. on 4 May 2023. A separate notice of hearing will be sent out in due course. that she was directly discriminated against because of her race is not well founded and is dismissed.
2. Claimant (1) shall send to the Tribunal a statement dealing with the issue of status by no later than 17 March 2023.

## WRITTEN REASONS

1. The Claim of the First Claimant was listed before me today. She claims that she is due £784.90 in respect of unpaid wages and a further £6.56 in relation to a failure to pay her at the Minimum Wage. The named Respondent has not entered a Response and so as the Claimant has provided a clear basis for why she is owed the sums claimed which I have looked at and consider accurate there should have been little problem with dealing with this case swiftly.

2. Unfortunately I have not been able to do that and whilst highly unfortunate to delay a final resolution to the claims there are matters that have arisen which need to be dealt with prior to any Judgment being entered.
3. I will deal with the background comprehensively in order to assist my colleagues when they come to consider matters that I shall refer to them for consideration. I apologise for adding to their work load.
4. On 10 March 2022 Ms Taffs issued a Claim Form identifying Mr Johnson as her employer between 26 September 2021 and 1 January 2022. Within her Claim Form she identified by first name only (Kylie) a potential second Claimant. In fact that was Mrs Kylie Tucker who brought her own claim against Mr Johnson on 2 April 2022.
5. There were similarities in the claims in that both worked from the same premises and both were asserting an under payment of wages by Mr Johnson and an Order was made on 5 May 2022 that both Claims should be heard together. On all the documents I have seen that was an entirely sensible course of action.
6. The first problem arises in relation to ACAS Early Conciliation. Ms Taffs named Coffee Stop Poole Limited on the ACAS Early Conciliation Certificate which was, of course, at variance with the name on the Claim Form and so fell within the auspices of Rule 12 (1) (f) of the Employment Tribunal (Constitution and Rules of procedure) Regulations 2013 (Schedule 1).
7. On 31 March the Claimant was alerted to the mismatch by EJ Gray and asked to confirm who the correct respondent was – the individual or the Limited company. By return the Claimant responded and indicated that Mr Johnson was the director of the Limited company and that she contended that Mr Johnson was her employer with out providing any reasoning for that conclusion.
8. It is not clear to me whether or not the matter was referred to EJ Gray for further consideration about the mismatch point but it seems to me that a decision was made that the Claim could be accepted. The process that should have been adopted was that a judge should have considered that if the Claim was of a kind described at Rule 12 (1) (f) the Claim should be rejected “unless the Judge considers that the Claimant has made an error in relation to a name and the interests of justice” meant that the Claim should proceed (Rule 12 (2A)).
9. I will refer the matter back to EJ Gray for him to see if he can recall whether or not he made that decision. If he recalls that he was seized of that decision then I would ask him to consider whether, in light of correspondence from the Claimant dated 24 June 2022, whether he wishes to reconsider that decision. In the event that EJ Gray did not make a decision on the Rule 12 (2A) point then it would appear that the proper process has not been followed by failing to

refer the same to him and the issue remains at large and I will make a ruling on that issue.

10. The same issue in relation to the Claim relating to the Second Claimant. These claims were ordered to be heard together because of their commonality of fact. The Second Claimant also failed to name Mr Johnson on the ACAS EC Certificate. The same issue as to who the employer was pertains to the Second claimant's case as well. EJ Rayner on the information before her considered that there was an error in relation to the name and that it would not be in the interests of justice to reject the claim.
11. I do not consider that there is any need to refer the matter to EJ Rayner as there is nothing that is in the email of the First Claimant that would impact upon her decision that the Second Claimant had made an error.
12. Where there is a possible need to reconsider is in respect of the Judgment made by EJ Gray to award the Claimant £106 against Mr Johnson on 16 June 2022. These claims were ordered to be heard together and so the information in both claims should have been before EJ Gray when making his decision. Information has come to light from the First Claimant in her 24 June 2022 email which it seems to me that EJ Gray may wish to look at and to ask himself whether any reconsideration is required of that Judgment in light of the information about the correct employer.
13. In addition, the Claims were meant to be determined together but were not for reasons I cannot ascertain from the file and EJ Gray may wish to consider whether his final Judgment made in the absence of the other conjoined claim might also be a ground for reconsideration.
14. I have relisted the First Claimant's claim for hearing on 4 May 2023 for two hours and will review that once EJ Gray has considered the matters I have referred to him.

Employment Judge Self  
Date: 24 February 2023

Judgment sent to the parties: 24 March 2023

For the Tribunal Office