



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Ama Karina Bappa Ampomah  
**Respondent:** Secretary of State for Justice

**Heard at:** Watford (CVP)  
**On:** 6 January 2023  
**Before:** Employment Judge Alliott (sitting alone)

## Appearances

For the claimant: In person

For the respondent: Mr Mark Greaves (Counsel)

## JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim is struck out.

## REASONS

1. This open preliminary hearing was ordered by Employment Judge Lewis on 14 August 2022 to determine the following issue:

“To consider strike out on any of the following grounds:

- (1) That the ACAS requirements were not met
  - (2) That the claim has no reasonable prospects of success and/or to consider deposit orders on grounds that the claim has little reasonable prospect of success.”
2. Logic dictates that I should deal with the jurisdiction point first as, if I decide that no valid claim has been presented and there is no jurisdiction, so there is nothing for me to strike out under rule 37 (no reasonable prospect of success) ETs (constitution and rules of procedure) regulations 2013.
  3. I have decided that no valid claim has been presented, that there is no jurisdiction to hear the claim and that therefore it must be struck out. Nevertheless, I have gone on to express my views of the claimant's prospects of success. This is because it is always open to the claimant to re-issue her claim and apply for an extension of time on a just and equitable basis. Given that she was misled by the tribunal as to why her claim had

been rejected and that it had subsequently been accepted, it must be highly likely that a future tribunal would be sympathetic to any such extension of time application. As such, the parties would find themselves back here in about a years' time with the same application to strike out the claim.

**The validity of the claim.**

4. The claimant obtained two ACAS EC certificates as follows:
  - R12502-2022-76: Date of notification 28 February 2022  
Date of certificate 2 March 2022
  - R125813-2022-52: Date of notification 1 March 2022  
Date of certificate 3 March 2022
5. The claim was presented on 1 March 2022. The claimant ticked the boxes saying she did not have an EC certificate with the explanation "ACAS doesn't have the power to conciliate on some or all of my claims." The claimant told me she had ticked this box as some of her claims related to her County Court matter.
6. Be that as it may, the claimant did set out two ACAS numbers in section 8.2 of the claim form. However, the numbers are in actual fact the ACAS reference numbers issued on notification and did not have the final two digits "76" and "52" that appear on the certificates. Both certificates post date the date of presentation of the claim form.
7. Accordingly, the claim was issued before there was an early conciliation certificate number.
8. The claim was referred to Employment Judge Tynan with the observation that the claimant appeared to have an ACAS EC certificate but that the complete number had not been provided. EJ Tynan directed that the claimant be asked to file copies of her two ACAS certificates on 7 April 2022. The form was not returned to the claimant with a notice of rejection explaining why it had been rejected. Due to the fact that by then the claimant had received the certificates, the claimant duly sent them in on 7 April 2022. The claim was referred to EJ Tynan who accepted the case on the basis that it would be in the interests of justice to reconsider the rejection under rule 13, i.e. on the basis that the defect had been rectified.
9. In fact, there was no defect to be rectified or capable of rectification.
10. I have been referred to the case of Pryce V Baxterstorey Limited [2022] EAT 61, HH Judge Shanks. This is binding upon me and clearly on point. Section 18 A(8) ETA 1996 is a mandatory requirement, its requirement cannot be waived and there is no discretion under it. Further, if it has not been presented properly in the first place then it cannot be re-presented.
11. As such, I am bound to rule that the claim is a nullity and should have been rejected immediately and that there was no discretion under rule 13 to reconsider its rejection.

12. Accordingly, the claim must be struck out.

**Prospects of success**

13. Even though I have struck out the claim on jurisdictional grounds, for the reasons already explained, I go on to give my reasons as to why, had I not struck out the claim already, I would have struck it out on the grounds that it has no reasonable prospects of success.
14. I remind myself that the Employment Appeal Tribunal has made it abundantly clear in many cases that in discrimination cases, due to the fact sensitive nature of such claims and the importance of allowing a claimant to test the evidence, it is only in the clearest of cases that a strike out order would be appropriate.
15. I have explored with the claimant in depth exactly what it is she is complaining about.
16. In May 2017 the claimant brought an E.T. claim against an ex-employer for age/race discrimination and arrears of pay. The case was settled in October 2017. It would appear that the claim was dismissed, presumably upon withdrawal, and the judgment was entered onto the MOJ website along with the claim codes.
17. The claimant told me that since then she has been unable to obtain employment. The claimant attributes this to prospective employers becoming aware of the ET case and “blacklisting” her. If what she says is correct, and I have no reason to doubt her, then I fully understand her upset and frustration at her predicament. Sadly, in my experience she is not alone.
18. I have explained to the claimant that the employment tribunal has no power to order a judgment to be removed from the MOJ website. I have also explained that there is no jurisdiction to determine DPA/GDPR and HRA matters, all of which are referenced in her claim form.
19. The claimant has never worked for the MOJ.
20. The claimant has brought a claim in the County Court against the MOJ concerning the judgment on the MOJ website. In the County Court proceedings the claimant served a schedule of loss on the MOJ legal representatives (the Government Legal Department: Treasury solicitor “GLD”) on 14 February 2021.
21. The MOJ retains a third party provider, Shared Service Connected Limited (SCCL) for a range of services that includes operating a recruit platform to deal with all applicants for positions. Positions are advertised online in a publication called “Personnel Today”.
22. The claimant was enrolled to receive Personnel Today posts. At 19:30 on Monday 21 February 2022 the claimant received an email which she saw on the morning of 22 February 2022. It was for a number of MOJ positions and

the closing deadline for applications was 21 February 2022. The claimant does not seek to blame the MOJ for the timing of this email.

23. On 22 February 2022 the claimant sent an email to Mr Amandeep Samra, the lawyer at GLD dealing with her county court case. This states:-

“I just saw this today. Would it be possible for you to arrange for your client to allow me time to submit an application please?”

24. Later on 22 February 2022 the claimant sent Mr Samra a chasing email as follows:-

“Without prejudice

Dear Amandeep Samra

This advert was on the Personnel management job board and was circulated by email at 19.10 hours yesterday at 21<sup>st</sup> February 2021.

I only saw it this morning but it had a closing date of today which seems odd.

Can you please speak to your client about extending the closing date to allow me to apply.”

25. On 23 February 2022 Mr Samra replied as follows:-

“With respect, it is not appropriate to send me an email requesting me to do what you have asked.”

26. There was a further exchange of emails between the claimant and Mr Samra on 28 February 2022 on this subject.

27. On 28 February 2022 the claimant sent an email to Mr Samra with “without prejudice” in the subject line. This email states:-

“I sent you the request regarding employment because the closing date was 21 February and I only saw the advert on 22 February.

It is my understanding that you are acting on behalf of the MOJ to resolve the issues I have raised. It is also my understanding that court rules require both parties to do all they can to settle the claim before the hearing. In my revised schedule of loss I suggested employment with the MOJ as a way forward. It seems from your response that the MOJ has no interest in employing me.

I therefore have no choice other than to bring a claim of victimisation, discrimination and breach of my human rights against the MOJ.

...

I believe that the MOJ are refusing to employ me because I have brought a data breach claim against them. I don't see the connection between that and being employed by them. I have not raised an employment-related claim against them.”

28. On 2 March 2022 Mr Samra replied as follows:-

“Please note that the GLD is instructed by the MOJ to represent them in the case you bring for the allegations set out in your claim form and the updated particulars of claim. I have no authority (and it is outside the scope of my instructions) to request an extension to vacancy deadlines. Employment vacancies with the MOJ are a matter entirely separate to the litigation which you are pursuing against the MOJ and have no connection to the same. The correct course of action would have been for you to contact those in charge of the advertised vacancy. Either way, that is matter entirely for you.

...

For the record there is no basis on which you can properly conclude from the litigation correspondence in this case that “the MOJ has no interest in employing me”. The correspondence speaks for itself. The GLD cannot and will not speak for the MOJ either way in respect of any job application: if you wish to apply for any job opportunity with the MOJ you will have to follow whatever procedures are laid down in any vacancy advertisement that maybe interest you. It is nothing to do with the litigation either way.”

29. I am told that the context of this email was trying to settle the claimant’s County Court claim. The claimant was claiming loss of earnings to retirement. In her claim form for these proceedings she states:-

“As a solution to resolving the case, on 14 February I sent a revised schedule of loss to the MOJ’s legal representative asking that as an alternative to compensating me until retirement, the MOJ consider employing me.”

30. The claims the claimant seeks to present in this claim are victimisation and direct race/age discrimination.
31. The detriment/less favourable treatment complained about is Mr Samra not asking the MOJ for an extension to the deadline for the claimant to apply for the vacant positions.
32. The first point taken by Mr Greaves is that all the email exchanges relied upon are without prejudice and so are privileged. In my judgment he is correct. There are good public interest grounds in rendering without prejudice correspondence/exchanges privileged in order to facilitate and promote the settlement of disputes. In my judgment, notwithstanding the relaxed rules of evidence in the employment tribunal, it is extremely likely that these exchanges would be ruled inadmissible in evidence. With these exchanges excluded there is little or no evidential basis upon which the claimant could base her claims as set out below.
33. For the victimisation claim the claimant will have to establish that she had done or the respondent believed she had done or may do a protected act. The claimant seeks to advance the bringing of her claim in 2017 as a

protected act. It did involve bringing proceedings under the Equality Act. However, in my judgment the claimant faces a nigh on impossible task in establishing that Mr Samra did not request an extension of time for her to apply for vacancies because she had brought a claim against a third party five years before. The claim against the MOJ was for putting the judgment on the website.

34. It is fair to say that in her email on 28 February 2022 the claimant did refer to bringing a claim for victimisation and discrimination. However, in my judgment she again faces a nigh on impossible task in establishing that Mr Samra was acting because of that assertion. Mr Samra is working for the GLD and was engaged in settlement negotiations concerning a County Court claim. There is no prima facie facts from which a tribunal could begin to draw conclusions that there was a case to answer in terms of discriminatory conduct. He had no instructions to deal with any application for employment and correctly referred to the claimant on to the relevant part of the organisation that was dealing with vacancies.
35. As regards the race/age discrimination claims, the claimant will have to establish that a comparator in not materially different circumstances would have been treated differently. Again, in my judgment, the claimant faces a nigh on impossible task in establishing that Mr Samra would have requested extra time for a white or younger person who was in the process of suing the Ministry of Justice and seeking to negotiate a settlement.
36. I have concluded that this is a case where, taking the claimant's case at its highest, it is clear beyond doubt that it stands no reasonable prospect of success and I would have struck it out as such.

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Employment Judge Alliot

Date: 20 April 2023

Sent to the parties on: 25 April 2023

For the Tribunal Office