



EMPLOYMENT TRIBUNALS

Claimant: Mr Deshan Mendis
Respondent: Mr Naushad Hameed
Heard at: Reading **On: 8 January 2024**
Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: In person
For the Respondent: Mr M Ahmed, counsel

JUDGMENT

The claim is struck out.

REASONS

1. The claimant made complaints of unfair dismissal, unpaid wages and breach of contract in a claim form presented on 28 November 2022.
2. The claimant stated in the claim form that his employment ended on 15 May 2022. There is a typo on the claim form which reads 15 May 2012.
3. The claimant asserts that he was self-employed. He is making a claim for payment of the invoices submitted to Aero Travel Extras Limited a legal entity that is not a party to these proceedings.
4. Section 18 Employment Tribunals Act 1996 ('ETA') provides that relevant proceedings include employment tribunal proceedings under section 23 and 111 Employment Rights Act 1996, and article 6 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
5. Section 18A ETA requires a prospective claimant, before presenting an application to institute relevant proceedings, to provide ACAS with prescribed information (subsection 1). A person who is subject to this requirement may not present an application to institute relevant proceedings without a certificate (subsection 8).
6. Where there is no conciliation certificate and an application to present a claim is made, in a case where there is a no exemption to the requirement

to have such a certificate, the claim must be rejected by the employment tribunal.

7. In this case the claimant completed the claim form and in section 2.3 of the claim form ET1 ticked the box that reads "ACAS does not have the power to conciliate on some or all of my claim." The claimant was wrong to tick this box as it does not apply in the circumstances of his case.
8. The claimant was required to go through early conciliation. The claimant did not do so. The claimant therefore cannot bring proceedings in the employment tribunal.
9. Had the claimant properly obtained a conciliation certificate, the claimant's claims of unfair dismissal and breach of contract would in any event have been struck out on the grounds that the claimant was not an employee of the respondent. The claimant therefore cannot succeed in a claim of unfair dismissal, a claim that only an employee can bring. The claimant is not able rely on the extension of jurisdiction order to bring a claim of breach of contract which applies to employees and relates to contracts of employment or other contracts connected with employment.
10. Additionally, all the claimant's claims have been brought outside of the time limit for bringing proceedings in the employment tribunal and on the basis of what I understand to be the position it is likely that all the claims would have been struck out because it was reasonably practical for the claimant to present the claim in time.

Employment Judge Gumbiti-Zimuto

Date: 8 January 2024

Sent to the parties on: 26 January 2024

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For the Tribunals Office

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