Neutral Citation Number: [2025] EAT 108

Case No: EA-2023-001441-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 July 2025

Before:

THE HONOURABLE MR JUSTICE CHOUDHURY

- -

Between:

MS Y CHEN **Appellant**

- and –

COACH STORES LTD **Respondent**

- -
- -

MR BAYLIS-ALLEN (instructed by **Advocate**) for the **Appellant**
MS HELEN IFEKA (instructed by **Keystone Law**) for the **Respondent**

Hearing date: 10 July 2025

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JUDGMENT

SUMMARY

PRACTICE & PROCEDURE

The issue in this appeal is whether the Tribunal acting by a legal officer erred in rejecting a claim because the name of the respondent on the ET1 did not match the name of the employer on the early conciliation certificate.

Held: The Tribunal did err in that having found that there was an error: (i) it failed to apply rule 12(2A) of the Tribunal Rules in that it failed to consider whether it would be in the interests of justice to reject the claim; and (ii) it was not in the interests of justice to reject the claim. The EC certificate clearly names the correct party (Coach) as the prospective respondent. Coach was clearly at that stage the intended target of the claimant's claims. Whilst the claim form names an individual HR Manager as the person against whom the claim is brought, there are various indications in the details of claim that the intended target of the complaint is, and always has been, the claimant's employer, Coach. In analysing the claim form and details of claim, the EAT has borne in mind that the claimant was unrepresented and that one should avoid excessive formality in proceedings.

THE HONOURABLE MR JUSTICE CHOUDHURY:

1. This is an oral extempore judgment. The issue in this appeal is whether the Watford Employment Tribunal acting by a legal officer erred in rejecting a claim because the name of the respondent on the ET1 did not match the name of the employer on the early conciliation certificate ("the EC certificate").

2. The appellant, represented today by Mr Baylis-Allen, contends that the mismatch or misalignment between the names on the two forms amounted to an 'error' within the meaning of rule 12(2A) of the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* ("the rules") and that the legal officer erred in failing to consider that issue in rejecting the claim. Ms Ifeka for the respondent submits that the decision to name a manager instead of the employer was deliberate and not an error and that even if it was an error, the interests of justice and the finality in litigation mean that the appeal should be dismissed. I am grateful to both counsel for their helpful and concise submissions this morning, in particular to Mr Baylis-Allen who acts pro bono for the claimant in this case.

THE FACTUAL BACKGROUND

3. The claimant, who is of Taiwanese origin, commenced employment with the respondent, Coach Stores Limited ("Coach") on 28 November 2022 as a sales associate at its Bicester branch. She was dismissed by Coach just five months later on 21 April 2023 with four weeks' pay in lieu of notice. It is not necessary for present purposes to go into the details of what transpired during that short period of employment, suffice it to say that there were some alleged concerns about the treatment of staff sharing the appellant's protected characteristic or who were from an ethnic background other than white British.

4. The claimant considered her dismissal to be unfair and/or discriminatory. She commenced

mandatory conciliation with ACAS, receiving the early conciliation notification on 16 May 2023. On 15 June 2023 the claimant raised a grievance with the respondent. On 21 June 2023 the claimant received her early conciliation certificate ("the EC certificate") which is numbered R176523/23/44. The EC certificate names the "prospective respondent" as Coach Stores Limited, 2 Canalside Walk, Brunel Building, London, W2 1DG.

5. On 23 August 2023 the claimant filed her ET1 claim form with the tribunal. Under "respondent's details" the claimant entered the following: "Emily Dickinson (Tapestry Group) 7th Floor, Brunel Building, 2 Canalside Walk, London, Greater London, W2 1DG" and a phone number was provided as well. The ACAS conciliation number entered in box 2.3 is that of the certificate already mentioned. Thus, although the claimant named Ms Dickinson of the Tapestry Group as the person against whom she was bringing the claim, the address given is the same as the address for the proposed respondent on the EC certificate. It is not in dispute that Tapestry is a reference to the respondent's parent company. At 2.4 of the claim form the claimant entered the address where she worked as "(Coach Outlet) 107-108 Unit 50, Pingle Drive, Bicester, Oxfordshire, OX26 6WD". That is the first reference to Coach on the claim form. Section 11 of the claim form contains no details of any legal representative. The claimant was at that stage a litigant in person.

6. In her details of claim, the claimant sets out a series of incidents in support of her complaint and includes some material on the law. There is no mention of Ms Dickinson or "Emily" over those twelve pages of the details of claim, although other managers are mentioned, in particular, one named "Natalie". There is reference also to "the company" and the alleged failures of "line management", "management" and "supervisors". Coach is mentioned several times:

i) Under incident 4 the claimant refers to being in "trainers with Coach's logo…" in a complaint about differential treatment;

ii) Under incident 7 there is reference to "colourism being evident within Coach", an allegation that "within Coach white colleagues were treated better than the Asian

people…", that "Coach likes sending Asian staff to the other two brands of its parent company, Tapestry (Stuart Weitzman and Kate Spade)" and that "Coach never sends white staff to go there…";

iii) Under reference 1 the claimant cites an email setting out allegations of workplace bullying which is addressed to various managers with the address "… @coach.com" or "… @tapestry.com". Ms Dickinson is not referred to in any of these addresses, although there is a reference to a Bradley Cook who I am told is another HR manager with whom the claimant had dealings. The email contains a request to use "mental health support from the company…" and indicates that the claimant would send her medical report to "the company if it's necessary";

iv) Under footnotes, April 15, there is reference to "Alex and Yi arriving at the same time at Coach", this being an apparent reference to a colleague who arrived at work at around the same time as the claimant.

7. On 2 November 2023 legal officer, F Khan, at Watford Employment Tribunal rejected the claimant's ET1 giving the following reason:

> "Your claim form has been referred to F Khan, Watford legal officer, who has decided to reject it. The reasons for this decision are that although you have given an early conciliation number in section 2 of the claim form, the name of the prospective respondent on the early conciliation certificate is not the same as the name of the respondent on the claim form. I enclose some explanatory notes called 'claim rejection – early conciliation: your questions answered'. They include information about applying for a reconsideration of the decision to reject your claim."

8. The rejection letter included information about applying for a reconsideration, which said an application had to be made within 14 days, that is to say by 16 November 2023. The claimant, in fact, applied for a reconsideration on 24 November 2023. The reason given for the delay, according to her appeal form, is that she was struggling with her mental health at the time and was unable to cope with the stress of bringing a claim against a large international company.

9. On 13 December 2023 the claimant lodged a notice of appeal with the EAT. The appeal was stayed on 11 March 2024 pending the outcome of the reconsideration application which had yet to be determined by the Employment Tribunal. That application was considered by EJ Anstis on 12 March 2024 and rejected on the grounds that it was made out of time. On 26 July 2024 DHCJ Matthew Gullick KC (sitting as a judge of the EAT) gave leave to proceed to a full hearing. The sole ground of appeal is, as mentioned above, that the tribunal erred in rejecting the claim.

THE LEGAL FRAMEWORK

10. Rule 12 of the rules in force at the time, so far as relevant, provides

> "12 – rejection: substantive defects
>
> (1) The staff of the tribunal office shall refer a claim form to an Employment Judge if they consider that the claim, or part of it, may be:
>
> …
>
> (f) one which institutes relevant proceedings and the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate to which the early conciliation number relates
>
> …
>
> (2A) the claim, or part of it, shall be rejected if the judge considers that the claim or part of it is of a kind described in subparagraph (e) or (f) of paragraph (1) unless the judge considers that the claimant made an error in relation to a name or address and it would not be in the interests of justice to reject the claim."

11. The previous version of subparagraph (2A), repealed with effect from 8 October 2020, provided that the claim would be rejected:

> "… unless the judge considered that the claimant made a minor error…" (emphasis added).

12. The leading authority on the effect of rule 12(2A) is the judgment of DHCJ Clive Sheldon KC (as he then was, sitting as a judge of the EAT), in the case of *Stiopu v Loughran* EA-2019-000752-BA in which the pre-8 October 2020 version of the provision was considered. In that case the claim had been rejected because the name of the respondent on the claim form was different from that on the EC certificate. At paragraph 5 of the judgment the terms of the letter are set out:

> "Your claim form has been referred to Employment Judge Wade, who has decided to reject it because the name of the respondent on the claim form is different from the name on the ACAS certificate. I'm therefore returning your claim form to you. I also enclose some explanatory notes called 'claim rejection: your questions answered'."

13. At paragraph 17 of *Stiopu* the EAT noted that it appeared from the short decision letter that there had not been any consideration of whether the claimant in that case had made a "minor error" or that if there had been, the reasoning was not explained. The EAT went on to describe Rule 12(2A) as a 'rescue provision' designed to prevent claims from being rejected for technical failure to use the correct name of the respondent (or the claimant) in the early conciliation certificate and the ET1.

14. At paragraph 18 the EAT considered that the language of the provision:

> "…requires the employment judge in every case to ask him or herself the question as to whether there is a 'minor error' in relation to a name or address and whether it would or would not 'be in the interests of justice to reject the claim'. These questions are part of the overall rule at 12(2A).
>
> 19. This can be seen clearly when one compared the language of rule 12(2A) with rule 12(2). Rule 12(2) simply provides that:
> 'The claim or part of it, shall be rejected if the judge considers that the claim, or part of it, is of a kind described in subparagraphs (a), (b), (c) or (d) of paragraph (1).'
> Rule 12(2) does not contain a rescue provision."

15. The EAT in *Stiopu* went on to conclude that the tribunal had erred in failing to consider whether or not the rescue provision applied and that if it had done so, it might have identified a minor error:

> "21. In the instant case, the materials that were available to the employment judge were those contained within the certificate and the ET1 itself. This included points (1), (4) and (5) of the list set out above: (1) that although the name of the respondent in the certificate, Carebrook Limited was described as the claimant's employer (4) the claimant did not appear to be legally represented (she had not filled out any details for her legal representative in the ET1); and (5) the address for Gerard Loughran (the respondent in the ET1) and Carebrook Limited (the respondent in the certificate) was the same. These matters could constitute minor errors within the meaning of rule 12(2A).
> …
> 23. There is nothing in the very brief letter from the employment tribunal to suggest that the employment judge had even considered whether these matters amounted to a minor error. The claim appears to have been rejected simply because rule 12(1)(f) was satisfied, that there was a misalignment between the name and address of the respondent in the certificat5e and in the ET1. In my judgment, this was an error of law on the part of the employment judge. The employment judge should have considered whether or not the rescue provision applied, and if she had done so then she might have identified a minor error and would then have asked herself whether the interests of justice called for the claim to be allowed to proceed. She does not appear to have done so, and that is an error."

16. Accordingly, the matter was remitted to the tribunal. I agree with the EAT's analysis in *Stiopu* as to the effect of rule 12(2A) of the rules, save of course that under the version of the rules in force at the relevant time in this case the obligation on the tribunal is merely to consider whether there was "an error" as opposed to a "minor error". It is inevitable that the removal of the word "minor" will lead to more cases falling within the rubric of rule 12(2)(4) than before: see for example *Harvey on Industrial Relations* at 305.02.

17. In the decision of HHJ Tucker in *Balcerzak v George Birchall Service Ltd* [2022] EAT 202 the issue was whether the tribunal had made an error in rejecting a claim on the basis that the EC certificate number provided did not match the one on the certificate itself. That was considered to be an error in that they were the same. HHJ Tucker in reaching her conclusions said at paragraph 12:

> "12. Given the amendments which have been made to Rule 12 of the ET Rules of Procedure, it is good practice, in my judgment, that when Employment Judge consider a claim and compliance with the early conciliation provisions, that they maintain within their mind a 'checklist' of both the need to check, first, whether there are any discrepancies between that set out in the Claim Form and which appears on the EC Certificate but, also, the question of what that error is and whether, in the light of that error, it is appropriate to reject the claim and whether it would be in the interests of justice to do so.
>
> 13. To that extent, I agree with the tenor of the points made by Mr Sheldon KC, sitting as Deputy Judge of the High Court, as he then was, and set out in paragraphs 17 to 18 of the decision in *Stiopu v Loughran, EA-2019-000752-BA*…

18. In the case of *Chard v Trowbridge Office Cleaning Services Ltd* UKEAT/0254/16/DM which was decided before *Stiopu*, Kerr J stated that naming an individual rather than the relevant company could qualify as what used to be a 'minor error' (see paragraph 62 of that judgment) and that when considering rule 12(2A) the judge needs to place considerable emphasis on the overriding objective, including the need to avoid unnecessary formality and seek flexibility in the proceedings.

> "67. I consider also the wording of Rule 12(2A) in the light of the overriding objective, with which it was presumably intended to operate harmoniously. It has been pointed out that it appears to enact a two-stage test. On a literal reading, the first stage is to consider whether the error is minor without regard to the interests of justice. The second stage then arises only if the Judge has already concluded, ignoring the interests of justice, that the error is minor. If but only if she has reached that conclusion must she go on to consider whether it would not be in the interests of justice to reject the claim."

19. Rule 2 of the rules (overriding objective) is also relevant in requiring that cases are to be dealt with fairly and justly which includes avoiding unnecessary formality and seeking flexibility in the proceedings.

SUBMISSIONS

20. Mr Baylis-Allen submits that the tribunal erred as was found to be the case in *Stiopu* in that there is no wording in the rejection letter which expressly or impliedly indicates that the rescue provision in rule 12(2A) was considered. He further submits in the alternative that if rule 12(2A) had been applied properly, the legal officer had ample material before them to conclude that there was an error within the meaning of the rule and that it was in the interests of justice not to reject the claim.

21. In support of that contention Mr Baylis-Allen reminds the EAT that the claimant was acting in person and that focusing on substance rather than form, including the repeated references in the claim form and details of claim to Coach, inevitably leads one to conclude that she had intended to refer to her employer and had made an error. In the circumstances, including the lack of prejudice to the respondent, he submits, the appeal should succeed and the EAT should substitute a decision that the claim should not be rejected.

22. Ms Ifeka submits that with the removal of the word "minor" from rule 12(2A) the balance has tilted towards the question whether it would be in the interests of justice to rescue the claim. She reminds me that the "interest of justice test is broad textured" and that the ambit of the discretion afforded to the tribunal in this regard is "wide" (see *Phipps v Priory Education Services Ltd* [2023] ICR 1056 at [31] per Bean LJ). She also reminds me that the discretion to act in the interests of justice is not open-ended, that it should be exercised in a principled way having regard to the importance of finality in litigation which militates against the discretion being exercised too readily (see *The Ministry of Justice v Burton & Anor* [2015] EWCA Civ 714 at [21] per Elias LJ).

23. Ms Ifeka submits, relying on rule 62(4) of the rules and *DPP v Greenberg* [2021] EWCA Civ 672, that there is no obligation on the decision-maker to set out the particular rules or provisions considered and that the decision in this case did not amount to an error. To the extent that the decision in *Stiopu* requires more than was provided in the decision in the rejection letter here, Ms Ifeka contends that it was wrongly decided.

24. Ms Ifeka submits that the claimant, in any event, intended to sue Ms Dickinson in person and therefore cannot be said to have made any error at all. This is to be inferred from the content of the details of claim which is essentially a 'copy and paste' of the grievance which had been directed to a Mr Bradley Cook and Ms Dickinson, two HR managers who the claimant is said to have held personally liable for their role in her unsuccessful grievance and appeal. This is also to be inferred, says Ms Ifeka, from the claim form in which the claimant makes complaint over the fact that she had received a late response from HR to her grievance.

25. It is also submitted that it is clear that the claimant had drafted her claim having researched the law and used sophisticated language and that the references to Coach in the details of claim should not deflect from a proper understanding of the claim on its face. In any event, it is said by Ms Ifeka that the claimant had failed to take the opportunity available to her to apply for a reconsideration in time and to allow the claim to proceed at this stage would be to undermine finality and would be to go behind two tribunal decisions which should be respected.

DISCUSSION

26. The rejection letter was very brief. No criticism is made of that in itself. However, the rejection letter merely stated that the claim had been rejected because the name of the prospective respondent on the early conciliation certificate is not the same as the name of the respondent on the claim form.

27. Does that brevity belie an error of law and, in particular, a failure to comply with the

requirements of rule 12(2A)? With some hesitation, I have come to the conclusion that it does reveal an error of law. As held in *Stiopu*, the wording of rule 12(2A) requires that in order for a claim to be rejected, not only must it be found to fall within one of the subparagraphs to which rule 12(2A) applies, but the decision-maker must also go on to consider whether that amounts to an "error" and, if it does, whether it would be in the interests of justice to reject the claim.

28. The terms of the rejection letter suggest that it was sufficient that the names in the claim form and EC certificate did not match for the claim to be rejected. It is impossible to infer from the terms of the rejection letter that any consideration was given to the further questions identified, and in particular the final question as to the interests of justice. The position was therefore very similar to that which arose in *Stiopu*, save for the difference in the wording of rule 12(2A) at that stage. That difference in wording does not, in my judgment, make any substantive difference to the approach to be taken by the decision-maker in applying rule 12(2A). There might be some cases - for instance where the claimant makes it clear on the face of the claim form that, notwithstanding what is said on the EC certificate, she has changed his or her mind and now wishes to bring a claim against another named party - in which such an inference might be drawn and that the decision-maker had concluded there was no error, albeit there is no express reference to that in the decision. However, in most cases, where the mere fact of a mismatch in names could signify an error, a proper application of the rule requires the question of error, and if there is one, the interests of justice to be considered.

29. My hesitation stems not from any doubt as to the correct position in law, which I consider to be clear, but with the burden that this interpretation might appear to place on judges and/or legal officers to whom the power to make those decisions has been delegated (see Practice Direction Employment Tribunals Legal Officers [2021] ICR 694). However, on analysis, the burden is not a heavy one. Having determined that there is a mismatch, the legal officer or the judge need merely consider whether there is an error.

30. As identified before, there may be cases where it is obvious that a different respondent had been named intentionally. In such cases, the decision need state no more than there is in the decision-maker's view no error. If there is, however, an error then the further question whether it would be in the interests of justice to reject the claim must be considered. That question may require a closer analysis of the overall circumstances of the claim, bearing in mind that a determination as to where the interests of justice lie can involve a multitude of factors. However, that is the analysis required by statute and it cannot be avoided merely because it might not be straightforward in all cases. It seems to me that in almost all cases where rule 12(2A) is considered the decision-maker will have to consider the content of the claim form in order to assess whether an error has been made. In doing so, the relevant factors for the interests of justice will also be apparent.

31. I do not accept Ms Ifeka's submission that one should assume that the very fact the legal officer was undertaking the very task they were trained for means that all parts of the statutory test were applied in making the decision. Here, as in *Stiopu*, there is nothing to indicate that the question of error or the interests of justice were considered. The decision would have been adequate had it said no more than that there was an error but that in the circumstances it was not considered to be in the interests of justice to reject the claim. That would have been sufficient to comply with the requirement to consider all aspects of rule 12(2A). This is not an injunction on legal officers and judges to give extensive reasons, merely to clarify that the statutory test was considered and applied.

32. Rule 62(4) of the rules which says that "the reasons given for any decision shall be proportionate to the significance of the issue and for decisions other than judgments may be very short", does not obviate the need to set out sufficient material in the decision for a person to be able to understand the basis on which the decision was reached. A decision applying rule 12(2A) may be very short but there does need, as held in *Stiopu*, to be some indication that the relevant questions under that rule were considered.

33. That error of law is sufficient to dispose of the appeal and remit the matter to the tribunal to consider the questions under rule 12(2A) which appear not to have been addressed. However, the parties are agreed here that the proportionate and appropriate course is for the EAT to consider the matter for itself. I am satisfied that this is a case where the EAT can, in the exercise of its powers under section 35 of the *Employment Tribunals Act 1996*, go on to consider the relevant issue itself. My reasons for coming to that view are as follows:

i) The decisions to be made are ones that would have been made by the decision-maker on the papers without further evidence. The EAT has before it all the material that it requires to make the decision that ought to have been made before.

ii) The claim form and the details of claim and the EC certificate are the same now as they were before the decision-maker.

iii) Both parties are represented today and have had ample opportunity in their written and oral submissions to address me on the effect and meaning of the relevant documents, whether or not there is an error and where the interests of justice lie.

iv) There has already been considerable delay, and further remission to the ET where that is not necessary will only add to the delay.

v) There is, in my view, an obvious outcome on the facts of this case which gives rise to clear and unanswerable conclusions on the remaining questions.

vi) The EAT is therefore in just as good a position in the circumstances of this case to decide the matter.

34. Was there an error? The first question is whether there has been an error. I am entirely satisfied that there was an error. The EC certificate clearly names Coach as the prospective respondent. Coach was clearly at that stage the intended target of the claimant's claims. Whilst the claim form names Ms Dickinson as the person against whom the claim is brought, there are various indications in the

details of claim that the intended target of the complaint is, and always has been, the claimant's employer, Coach. In analysing the claim form and details of claim, I bear in mind, as would the decision-maker, that the claimant was unrepresented and that one should avoid excessive formality in proceedings.

35. The indications in this case that the target of the complaint was the employer include the following:

i) The address given for Ms Dickinson is that of the claimant's employer, Coach. There is no danger in this case of the claim form being misdirected to another entity.

ii) The address given for where the claimant worked was that of Coach's premises in Bicester.

iii) There are, as set out above, numerous references to Coach in the details of claim. None of these references is inconsistent with the claim being against Coach and several of them are strongly consistent with that being the case. For instance, the claimant alleges the existence of "colourism… within Coach". That is a direct allegation of a discriminatory practice within the claimant's employer. Consistent with that are the various references as to what Coach did in terms of allocating certain personnel to certain tasks allegedly based on their ethnicity.

iv) By contrast, there is no allegation of fact whatsoever made against Ms Dickinson. The complete absence of her name in the particulars as compared to the numerous references to the alleged acts and failures of Coach strongly suggests that the claimant has erroneously named an HR representative with whom she had dealings in the course of her grievance and appeal as the target of her complaint.

36. These indicators all point to an error having been made. The position might have been different

if there had been allegations of discrimination made against Ms Dickinson personally, but there are none. In fact, the majority of the personal allegations are made against a manager by the name of Natalie. The repeated references to Coach must be viewed in that light. Whilst some managers are named, the principal allegations of discrimination are made against Coach.

37. Ms Ifeka sought to persuade me that one could infer from the content of the claim form, and the grievance to which it refers by incorporation, that the claimant's real complaint was, indeed, against Ms Dickinson. Not only is that not borne out by the contents of the ET1 to which I have referred above, it would not be appropriate to take account of material that would not have been before the decision-maker in deciding this question.

38. It is also relevant to note that in naming Ms Dickinson, the claimant included in parenthesis the fact that she was with Tapestry which is the parent company of Coach. The only other reference to Tapestry is in the context of an allegation that "Coach likes sending Asian staff to the two other brands of its parent company (Tapestry)…". The claimant's allegation is thereby focused on Coach as opposed to the parent company.

39. In my judgment, the above points and those set out earlier in this judgment point strongly, if not overwhelmingly, to there being an error of some sort. The claim is clearly against Coach and not in any way against Ms Dickinson personally. The inference to be drawn is that the claimant, for whatever reason, misunderstood the significance of naming Ms Dickinson, who may have been a point of contact at Tapestry during the internal grievance process and appeal, instead of her actual employer.

40. Would it be in the interests of justice to reject the claim? In my judgment, it would not be in the interests of justice to do so. This is for several reasons:

i) The error, whilst not insignificant, does not detract from the fact that the claimant is attempting to bring the claim against a readily identifiable employer in respect of which the correct address and contact details have been provided.

ii) The claim is not one that is obviously deficient by, for example, being wholly devoid of particulars. On the contrary, the claimant has identified a number of specific incidents and complaints with dates, locations and names of some of those allegedly involved. This is not, as Mr Baylis-Allen put it in his written submissions, 'a one-sentence pleading'.

iii) The error is one that is easily remedied and would have the result that the claimant is not driven from the justice seat by what is a matter of form rather than substance. The prejudice to the claimant were the claim to be rejected is far greater than the prejudice to the respondent, albeit that it would lose the undoubted benefit of not having to respond to a claim.

41. Ms Ifeka invites me to conclude that it would be in the interests of justice to reject the claim principally because it would be contrary to the interest in the finality of litigation to permit it to proceed. This, she says, is particularly so in this case where the claimant has made an error and has failed to act in time to avail herself of the opportunity afforded to her to apply for reconsideration.

42. However, this is not a case where a claimant is being permitted to resurrect a claim that has reached a late stage in proceedings and/or which has been disposed of against them. The interest in the finality of litigation is a less persuasive factor in dealing with matters at this early stage even before the respondent would have been involved. The failure to apply for a reconsideration in time is not a factor that carries significant weight in circumstances where there is, as I have found, an error of law on the face of the rejection letter. That error of law entitled the claimant to bring an appeal with or without applying for reconsideration.

43. For these reasons, I consider that it would not be in the interests of justice to reject the claim. Accordingly, this appeal is allowed, the decision of the tribunal rejecting the claim is set aside and a decision that the claim is to be allowed to proceed is substituted.