Neutral Citation Number: [2025] EAT 164

Case No: EA-2024-SCO-000052-JP

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street Edinburgh EH3 7HF

Date: 6 November 2025

Before :

THE HONOURABLE LADY HALDANE

- -

Between :

THE SCOTTISH AMBULANCE SERVICE BOARD **Appellant**

- and –

MR ANDREW CHAPMAN **Respondent**

- -
- -

Mr Greg Fletcher (NHS Central Legal Office), for the **Appellant**
The **Respondent** being neither present nor represented

Hearing date: 12 June 2025

- -

JUDGMENT

SUMMARY

Practice and Procedure; circumstances in which Rule 12 of the ET Rules are engaged

A claim based on disability discrimination was submitted to, and accepted by, the ET. A number of the mandatory aspects of the form were left blank. The respondent contended that it could not sensibly respond to the claim and that in any event the ET had fallen into error in accepting the claim and making a number of case management decisions in respect thereof without first remitting the claim to an employment Judge in terms of Rule 12 to determine whether, *inter alia*, the ET did in fact have jurisdiction over the claim and whether the claim could sensibly be responded to.

Held: that the ET had fallen into error in accepting the claim and making case management decisions in respect of the claim when there was a complete absence of particularisation of the nature of the claim and the Respondent could not sensibly respond thereto. **Trustees of the William Jones's Schools Foundation v Parry** [2018] ICR 1807 considered.

Appeal upheld on two out of three grounds and the matter remitted to the ET for consideration under Rule 12.

The Honourable Lady Haldane:

Introduction

1. This matter came before me for a full hearing on 12th June 2025. The appellant is the Scottish Ambulance Service Board, and the respondent is Mr Andrew Chapman. For ease, I will refer to parties as the clamant and respondent, as they were below.

2. The respondent appeals against certain case management decisions made by the ET following receipt and acceptance of the claimant's ET1 claim form. The key question at the heart of the appeal is this: was the claim form so devoid of detail as to the nature of the claim that it ought to have been referred to an Employment Judge under rule 12 (1) (b) of the **Employment Tribunal Rules 2013** (in force at the time) on the basis that the respondent could not sensibly provide a response to it?

3. There are three grounds of appeal, all of which were granted permission to proceed to a full hearing by the sift Judge, although in respect of the third, he expressed the view that he had less confidence in that ground than in the first two.

4. The grounds of appeal are, respectively, (i) that the Tribunal erred in accepting the claimants' claim form given its failure to set out to any extent the particulars of his single claim for disability discrimination, thus meaning that it could not meaningfully be responded to in terms of Rule 12(1)(b); (ii) that following on from that error, the ET did not have a basis to assert that it had jurisdiction in this matter and thus was in error in making case management orders and allowing the claim to progress; and (iii) that by accepting the claim form the ET had 'changed the test' that must be met by the claimant, to the detriment of the respondent. In particular the ET would not be applying the time limits in § 123 of the **Equality Act 2010** ('**EqA**') but rather the test applicable to amendment.

5. The claimant was notified of the appeal, and lodged a response dated 28th July 2024. However, since that time, and despite efforts on the part of the EAT staff and indeed the respondent to contact him in relation to the appeal, the claimant failed to make contact or respond to any communication. On the day of the Full Hearing of the appeal, the claimant failed to appear. I advised

the respondent's representative, Mr Fletcher, that in the interests of justice, and consistent with the overriding objective, I would have regard to the documents lodged, and the grounds of appeal that had been permitted to proceed to a Full Hearing. I would in addition have regard to the response submitted by the claimant, taking its contents at their highest, Mr Fletcher's submissions, his skeleton argument, and the core bundle lodged and provide a written decision. Mr Fletcher indicated he was content with that approach.

Background

6. The claimant submitted his ET1 form on 27th May 2024. This *pro forma* document consists of a number of different sections where information about the parties and the claim can be inserted. At the start of the form, it is clearly stated that the person completing the form 'must complete all questions marked with an '*'(asterisk). The claimant completed his personal details, and confirmed that he would be able to take part in video and phone hearings. He also completed the relevant details of the respondent and confirmed that an ACAS early conciliation certificate had been obtained, with the certificate number supplied. Thereafter, the claimant confirmed that his case was not one of multiple cases, that he worked for the respondent, the date of commencement of his employment and that his employment was continuing. He described his role as 'trainee ambulance technician.'

7. In the section relating to earnings, section 6, no information was provided in relation to earnings, hours worked and the like, other than a tick in the box 'No' in response to the question 'Were you in your employer's pension scheme?' However none of the questions in this section are marked with an asterisk. Section 7, relating to the claimant's circumstances in the event that his employment had terminated, was left blank.

8. Section 8 is headed 'Type and details of claim.' Section 8.1 asks what type of claim is being made. Several options are listed, and the question is marked with an asterisk. The claimant ticked the box next to 'disability.' Section 8.2 is similarly marked with an asterisk and requests details of the claim, including relevant dates of events complained about. This box is entirely blank.

9. Section 9 asks for information on the remedy sought in the event of success. The claimant has ticked two boxes, one seeking compensation only, and the other, 'if claiming discrimination, a recommendation.' In response to the question, 'What compensation or remedy are you seeking?' the claimant has inserted 'Compensation: "Amount requested; £40000". The remainder of the form has been left blank, other than a tick in the box next to 'No' in response to the question at section 12 'Do you have a physical, mental or learning disability or health condition that means you need support during your case.'

10. By letter dated 31st May 2024, the ET sent to the respondent a letter beginning, 'The Employment Tribunal has accepted a claim made against you.' Information then followed on how to submit a response form, advising of the date for a Preliminary Hearing, and sundry other procedural information. The respondent wrote to the Tribunal on 4th and 6th June 2024, querying whether there was a 'paper apart' to the claimant's ET1 form setting out details of his claim. The ET responded on 7th June 2024, advising that all paperwork had been sent to the respondent and that there was no 'paper apart' or other attachment to the claim. The letter advised that the matter had been placed before a Judge who had directed that the claimant was required, within 14 days, to submit a summary of the basis of his claim, including the nature of the disability, and relevant dates and times on which discrimination had allegedly occurred. By notice of appeal dated 27 June 2024, the respondent intimated its intention to appeal the decision to accept the claim.

Relevant rules

11. At the time the claim form was submitted in this case, the relevant Rules were the **Employment Tribunals Rules of Procedure 2013**, and in particular Rule 12, which provided:

> "**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:
>
> (a) one which the Tribunal has no jurisdiction to consider;

> (b) in a form which cannot sensibly be responded to or is otherwise an abuse of the process;
> (c) one which institutes relevant proceedings and is made on a claim form that does not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies;
> (d) one which institutes relevant proceedings, is made on a claim form which contains confirmation that one of the early conciliation exemptions applies, and an early conciliation exemption does not apply;
> (e) one which institutes relevant proceedings and the name of the claimant on the claim form is not the same as the name of the prospective claimant on the early conciliation certificate to which the early conciliation number relates; or
> (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.
>
> (2) 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 sub-paragraphs (a), (b), (c) or (d) of paragraph (1).
> (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 sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim.
>
> (3) If the claim is rejected, the form shall be returned to the claimant together with a notice of rejection giving the Judge's reasons for rejecting the claim, or part of it. The notice shall contain information about how to apply for a reconsideration of the rejection.'

Submissions for the respondent

12. Mr Fletcher adopted his skeleton argument which set out fully the respondents' position in relation to the three grounds of appeal narrated above. So far as the response submitted by the claimant was concerned, Mr Fletcher addressed in particular the suggestion by the claimant that the respondent was not prejudiced by the lack of information in the claim form as the respondent was already aware of the basis of the claim by virtue of a grievance and appeal lodged as part of the respondent's internal processes. Mr Fletcher rejected that contention, observing that the concept of disability is a wide one, and without some particularisation of what, and who, was being complained about the respondent would be required to investigate the whole of the claimant's employment history to try and deduce, or infer, exactly what lay behind the claim. This situation was unlike that in **Trustees of the William Jones's Schools Foundation v Parry** [2018] ICR 1807, where the claimant had been made redundant by the school in question and lodged a claim with the ET attaching

particulars of a different case, but no relevant information as to the basis of the claim actually made against the school. The Court of Appeal concluded that the respondent could not say that it had no idea about the basis of the claim since it was entirely aware of what had happened and had instigated the redundancy. Mr Fletcher placed particular emphasis on the analysis of Bean LJ at paragraph 32, which he said was entirely apposite to the circumstances of the present case:

> "32. I should add that, in holding that a sensible response could have been given to this claim, I am not laying down a general rule that the respondent to a claim in an employment tribunal must always be treated, for the purposes of rule 12(1)(b), as having detailed knowledge of everything that has occurred between the parties. If, for example, a claimant brings a claim for sex or race or disability discrimination without giving any particulars at all, or attaching the particulars from someone else's case, that ET1 might well be held to be in a form to which the employer could not sensibly respond and thus properly rejected under rule 12(1)(b). But in many unfair dismissal cases there will be a single determinative issue well known to both parties, so that even if particulars are omitted from the ET1 the employer can sensibly respond, for example: (a) the claimant was not dismissed; she resigned on [date X]; or (b) the claimant was dismissed on [date X] on the grounds of gross misconduct, which in the circumstances the respondent acted reasonably in treating as a sufficient reason for dismissal."

13. This was not a case where the respondent should be taken to know the entire details of, for example, a single incident giving rise to the claim. The concept of disability was a wide one and could encompass a number of factors. With no particularisation whatsoever of the nature of the claim, the respondent could not sensibly respond. The completion of the details of the claim was mandatory, and in those circumstances a failure to complete that part of the claim form ought to have engaged Rule 12, with the result that the claim should have been referred to an Employment Judge for consideration.

14. It followed, as set out in the second ground of appeal, that any action taken in respect of the claim without that step having occurred, such as the direction to provide further particulars of the claim, was also an error of law, as the ET could not be satisfied that it did in fact have jurisdiction to accept the claim standing the lack of any information as to its basis.

15. Finally and in any event the respondent was clearly prejudiced and had been denied the opportunity to challenge the claim on matters such as time bar. The only avenue open now, if further

particulars were provided, would be to challenge any proposed amendment applying a different test as enunciated, for example, in **Selkent Bus Co Ltd v Moore** [1996] ICR 836.

Analysis and decision

16. I have considered carefully all of the material before me, and in particular I have read the response submitted on behalf of the claimant, and taken that at its highest. I note and take account of the submissions made in relation to equal access to justice, and the relative imbalance between the claimant and the respondent, a public body. I have had regard to the authority cited by the claimant, **Giny v SNA Transport Ltd** UKEAT_0317_16, where a claim was rejected under Rule 12(1)(f) and 12 (2A) on the basis of a discrepancy between the identity of the respondent on the ACAS early conciliation certificate, and the respondent's name in the ET1. The decision to reject the claim on the basis that this was not a 'minor error' was upheld on appeal. It does not seem to me that this authority is supportive of the claimant's position, and, indeed, might point the other way.

17. Having considered all of the material before me, I conclude that there is force in the first ground of appeal. The language of rule 12(1) is mandatory – that the staff shall (emphasis added) refer a claim form to an Employment Judge where it is a form that cannot sensibly be responded to. The complete absence of any information whatsoever about the nature of the claim, other than the fact that it is said to come under the heading of 'disability' means, for all the reasons advanced by the respondent, that it cannot sensibly respond. Indeed, in its present form, it is hard to see how the ET could confidently proceed on the basis that it had jurisdiction, as envisaged in rule 12 (1)(a). Such a conclusion is, it seems to me, entirely consistent with the observations of Bean LJ in **Parry**, above.

18. It follows that a case management decision to allow time for further particularisation of the claim to be made without the claim form having first been seen by an Employment Judge and that Judge being satisfied that the ET had jurisdiction in respect of the claim was also an error, as submitted under the second ground of appeal. The relative imbalance between the parties and the more general submissions in relation to the interests of justice made by the claimant do not outweigh

this clear and objective procedural error and the consequences flowing from that error, in respect of which the relative prejudices weigh in favour of the respondent.

19. Those conclusions are sufficient for the appeal to succeed. The third ground of appeal is therefore otiose, but in any event I would not have upheld the appeal on this basis alone, as it advances an argument not arising directly from the error identified above and goes too far in suggesting that the error in the application of Rule 12 has somehow changed the relevant legal tests, although I do not demur from the broader proposition advanced under this ground that it would be a challenging task to attempt to apply the well accepted tests relating to amendment of pleadings without a foundational document on which to test whether any amendment amounts to a new claim, or simply further particularisation of an existing claim.

Conclusion and disposal

20. Mr Fletcher invited me to allow the appeal, to set aside the Tribunal's decision to accept the claim, to substitute a decision rejecting the claim under rule 12(1)(b); or alternatively to remit the matter for reconsideration before a different Employment Judge. Only three of those four steps are appropriate in the present circumstances. The errors identified consist of not putting the matter before an Employment Judge in terms of rule 12(1)(b), the lack of a determination therefore (a) whether the Employment Tribunal was properly seized of jurisdiction and (b) whether the claim could sensibly be responded to; and the consequent error in making a case management direction without that having been done. It would not however be appropriate for this Tribunal to usurp the procedure set out in the rules which requires an Employment Judge to have the claim form placed before them and determine whether the claim should be rejected, for the reasons advanced at appeal or for some other legitimate reason, or not rejected at all.

21. For those reasons, I will allow the appeal on the basis of the first and second grounds of appeal only, and thereafter remit the matter to the Employment Tribunal for consideration under Rule 12 by a different Employment Judge.