EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs K Bevan	v	**DDD Ltd**

PRELIMINARY HEARING

Heard at: **Watford** **On:** **4 July 2018**

Before: Employment Judge McNeill QC

Appearances:
For the Claimant: **Mr Irving, Solicitor**
For the Respondents: **Mr Delaney, Solicitor**

JUDGMENT

The tribunal has jurisdiction to hear the claimant's claim.

REASONS

1. The question for determination at the Preliminary Hearing was whether the tribunal had jurisdiction to hear the claimant's claim.

Facts

2. The relevant chronology was as follows:

   2.1 The claimant, who claims that she was unfairly dismissed by the respondent, was employed by the respondent from 1 August 1983 until 1 September 2017 when her employment came to an end.

   2.2 On 17 November 2017 ACAS issued an Early Conciliation (EC) Certificate numbered R209503/17/62. The parties agreed that the claimant then had one month in which to file her claim with the employment tribunal.

   2.3 On 14 December 2017, the claimant's form was filed with the tribunal in Leicester, having been sent the previous day by guaranteed next day

delivery. The ACAS EC Certificate number was stated in the ET1 to be 2095034/17/62. In short, the claimant erroneously omitted the R at the beginning of the EC certificate number (which arguably does not form part of the certificate 'number') and added an extra 4 at the end of the number.

2.4 What happened between 14 December 2017 and 24 January 2018 is unclear. However, on 24 January 2018, the claim form was stamped as being received in the employment tribunal service at Watford. The tribunal immediately emailed the claimant's solicitor and asked for the full Acas number as it was said that the number provided on the claim form as filed appeared to be invalid. It was stated that the EC number should start with the letter 'R'. Within a matter of minutes, the claimant's solicitor emailed the tribunal with the correct number. The number that was emailed did not include the digits 62 which are found at the end of the EC number, but that particular part of the number was correctly recorded on the claim form.

2.5 On 6 February 2018 the tribunal wrote to the parties confirming that the claim had been accepted and had been listed for hearing. The tribunal also gave directions.

2.6 On 5 March 2018, the respondent's solicitor wrote to the tribunal raising issues of jurisdiction, including both the error in the EC number in the claim form as originally presented and a time limit issue. The respondent invited the tribunal to strike out the claim. At that stage, the respondent's solicitor had no way of knowing that the claim form had been presented to the employment tribunal on 14 December 2017 and, quite apart from the recording of the EC number, reasonably thought the claim may have been presented out of time. The date of presentation of the claim was later clarified by the tribunal.

2.7 On 28 April 2018, Employment Judge Lewis confirmed that the claim was not rejected and that the claim remained listed. There was no application to reconsider or appeal that decision.

2.8 On 8 May 2018, the respondent's solicitor again wrote to the tribunal repeating previous representations.

Issue

3. The issue between the parties was whether the tribunal should now reject the claimant's claim. It was common ground between the parties that the error in the EC number was *de minimis*.

Law

4. The respondent relied on rule 10 of the Employment Tribunals Rules of Procedure. Rule 10(1) provides that:

> (1) The tribunal shall reject a claim if…
>
> (c) it does not contain all of the following information _
> (i) an early conciliation number….

5. In **Sterling v United Learning Trust** UK EAT/0439/14/DM, Langstaff P stated that it is implicit in rule 10(1)(c)(i) that the EC number should be an accurate number. In **Sterling,** the tribunal had rejected the claim form on the basis that the claimant had not fully entered the EC number. Mr Justice Langstaff went on to say that once it appeared to be the case that the EC number recorded on the claim form was not accurate, the tribunal was obliged to reject the claim form and that rejection would stand subject only to reconsideration.

6. Langstaff P referred in **Sterling** to rule 6 of the Rules of Procedure, which was relied on by the claimant in the current case, and the discretion to excuse non-compliance with the rules. In **Sterling,** the claimant had not relied on rule 6 and the judge could therefore not be blamed for failing to consider it.

7. The parties also both referred to the case of **Adams v British Telecommunications Plc** UKEAT/0342/15/LA where Simler P considered rule 10. In **Adams,** two digits from the ACAS EC number had been omitted so that the number was incomplete and therefore inaccurate. Simler P referred to rule 10(1)(c)(i) as a mandatory rule requiring a tribunal to reject a claim. In contrast to the position where a name of a claimant or a respondent was not the same as the name of the claimant or respondent on the EC Certificate, where rule 12(2A) provided an 'escape route' in case of minor error where it was not in the interests of justice to reject the claim, there was no escape route where the number was in error.

8. In cases where a claim form is rejected because of an error in the EC number recorded, a claimant may apply for reconsideration under rule 13(1) on the basis that the notified defect can be rectified. However, pursuant to rule 13(4) of the rules, where a defect is rectified, the date of presentation of the claim is deemed to be the date on which the defect is rectified and not the date when the claim was first presented.

9. The claimant's solicitor referred to but did not rely on **Cranwell v Cullen** UKEAT PAS/0046/14/SM, a case in which a claimant had not engaged at all with the ACAS conciliation process. The respondent confirmed that it did not rely on **Cranwell**. In **Cranwell,** Langstaff P considered rule 6 of the Rules of Procedure and determined that rule 6 could not modify statutory requirements in the Employment Tribunals Act 1996, in particular the requirement under section 18A of the Act to contact ACAS before instituting proceedings.

Conclusion

10. In the current case, in contrast to the cases of **Stirling** and **Adams,** the claim was not rejected. The claim was accepted as set out in the letter of 6 February 2018. This was confirmed by Employment Judge Lewis on 28 April 2018. In those circumstances the claimant proceeded on the basis that her claim had been accepted. As the claim had not been rejected and at risk of stating the obvious, the claimant could not apply for reconsideration. And there is no provision in the rules that enables a respondent to apply for reconsideration of an acceptance. In this respect this case is distinguishable from the cases of **Stirling** and **Adams**. In these circumstances and taking into account the confirmation of the employment judge

on 28 April 2018, I did not consider that I had power at this point to reject the claim. Therefore the claim must be permitted to proceed. I noted that if the claim had been rejected on 14 December 2017, there was every possibility that the claimant could have provided the correct number for the claim form so that the claim could have been brought within the primary time limit, something that was not open to the claimant once the error came to light.

11. Given that the argument was raised, I also considered rule 6 of the Rules of Procedure. Rule 6 provides that:

> "A failure to comply with any provision of these rules [excepting certain rules which do not include rule 10] does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include all or any of the following –
> (a) waiving or varying the requirement…. "

12. It was not contended that rule 6 could not apply to the requirement under rule 10(1)(c)(i). Applying rule 6, the claimant's minimal failure in recording the EC number in the original ET1 did not render the proceedings void.

13. The question then was whether it was just to waive or vary the particular requirement in relation to the provision of the EC number. There is a certain tension if a rule which is mandatory on its face, such as rule 10, can be avoided by the exercise of a discretion under rule 6, which is operated on the bases of what is considered to be just.

14. In the light of Employment Appeal Tribunal authority, I am bound to interpret rule 10(1)(c)(i) was requiring the EC number to be exact and without even the most minor typographical errors. I do, however, consider that the error is minimal. The claimant had gone through the proper ACAS EC process, as required by statute, and as soon as the error was brought to her attention, it was rectified. There was delay by the employment tribunal which is unexplained but was no fault of the claimant's. Were her claim precluded on jurisdictional grounds, she would lose the benefit of a potentially valuable claim which was important to her. The only prejudice to the respondent in allowing the claim to proceed is that it loses the benefit of a purely technical defence.

15. I concluded in all the circumstances, on this further and alternative basis, that it was just to waive or vary the strict requirement to provide the correct EC number in rule 10(1)(c)(i) so as to permit the claim to proceed.

Employment Judge McNeill QC

Date: 31 July 2018

Sent to the parties on:

31.07.18

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For the Tribunal:

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