EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr T Jeyasundra	v	**London Sovereign Limited**

PRELIMINARY HEARING

Heard at: **Watford** **On:** **26 June 2018**

Before: **Employment Judge C Palmer**

Appearances:

For the Claimant: **In person**
For the Respondents: **Mr E Nuttman, Solicitor**

JUDGMENT

1. The Tribunal has no jurisdiction to hear the claims.

2. All the claimant's claims are dismissed. This includes the claim for unfair dismissal and disability discrimination, being harassment, direct discrimination, failure to make reasonable adjustments, victimisation, discrimination arising from disability.

REASONS

Claims

1. By a claim form lodged with the tribunal on 18 September 2017, the claimant claimed unfair dismissal and disability discrimination.

2. The claimant's claims were identified in detail at a Case Management Summary on 23 January 2018.

The issue

3. The main issue to be determined at this Preliminary Hearing is whether the tribunal has jurisdiction to hear the claims having regard to Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (Tribunal Rules) Schedule1, Rule 12(1)(f) and 12 (2A). The respondent argued that the name on the Early Conciliation certificate was different to that on the Claim form and it was not a minor error.

Evidence

4. I heard evidence from the claimant. There was a bundle of documents provided by the respondent, which included some of the claimant's documents. I read those documents to which I was referred. On the basis of the evidence I find the following facts.

Facts

5. The claimant had worked for London Sovereign Ltd, as a bus driver, since 2007. He signed a contract of employment in October 2007 and another contract on 10 January 2008. Both contracts refer to his being employed by London Sovereign Limited. There was no dispute that the claimant's employer was London Sovereign Ltd, not Mr Clapson, who he named on the ET1.

6. The claimant was dismissed on 8 August 2017 for gross misconduct being breach of the mobile phone policy and breach of health and safety policy.

7. The letters before the tribunal from the bundle referred to London Sovereign and its registered office but also had the name RATP DEV LONDON, which was a French owned holding company (pages 223-224). RATP DEV LONDON was not the claimant's employer, though the claimant initially thought there may have been a change of his employer, though he had not received any information to this effect.

8. The claimant told ACAS that his employer was RATP DEV LONDON, Edgware Garage, Approach Road, Edgware HA8 7AN, and this was included on the Early Conciliation Certificate (p1). The reason for the claimant saying RATP DEV LONDON was his employer was that letters he received had at the top 'RATP DEV LONDON' though underneath it referred to London Sovereign and at the bottom of the page was 'LONDON UNITED LONDON SOVEREIGN and the Registered office of London Sovereign (p223, 224). The claimant also said that the buses he drove had the name London Sovereign on the side but his uniform had the name RAT DEV.

9. A letter from Ray Clapson to the claimant dated 21 August referred to the claimant's request to appeal the dismissal decision 'when your employment with London Sovereign was terminated'.

10. On the ET1 the claimant gave the name of his employer, in box 2.1, as Ray Clapson. Mr Clapson was a newly recruited General Manager, who heard the claimant's appeal but against whom the claimant had no complaint. In box 2.2 (under address) he put London Sovereign. Clearly there was a significant

difference between the name of the respondent on the EC certificate and the ET1. The address was the same as on the EC certificate.

11. The claimant then wrote to the Tribunal on 19 October 2017 asking to amend the respondent's name to RATP DEV LONDON not Mr Clapson. On 11 November 2017 the claimant wrote again to the tribunal to say that the respondent's name was wrong and he needed to amend it to London Sovereign Limited not Ray Clapson or RATP DEV LONDON.

12. The EC certificate number on the EC Certificate and the ET1 was the same: R175864/17/79.

13. The respondent raised in the ET3 discrepancy between the prospective respondent on the EC form and the name on the ET1, arguing that the claim should be rejected under Rule 12(2A), referring to Giny v SNA Transport Limited. The respondent also alleged that the claim was time barred.

14. The claimant said he took advice from a lawyer at Citizens Advice but was told that if he needed more advice he had to pay £200 which he could not afford. It is not clear what the claimant was advised during the initial meeting.

15. I accept that the claimant was confused about the name of the respondent, and this was understandable, but this is not a case in which the respondent was trying to hide their real name nor is it a case where the identity of the employer was particularly difficult to find. It was in the contract of employment and reference was made to the termination of the claimant's employment with London Sovereign on 21 August 2017.

Submissions by respondent

16. The respondent argued that the company the claimant put as his employer on the Early Conciliation form was wrong. RATP Dev London was not the claimant's employer as was clear from the contracts of employment. While some documents (p204, 223, 224) had the RATP logo they also have London Sovereign and their registered office and address. The name on the ET1 was incorrect as the claimant put the name of an individual, which may have been intended to be a respondent in the discrimination claim. The respondent referred to 4 authorities relying mainly on Giny v SNA Transport Limited UKEAT/0317/16/RN 22 May 2017 and Chard v Trowbridge Office Cleaning Services Ltd UKEAT/0254/16/DM 21 August 2017**.** The respondent's main argument was that the difference in names was not a minor error, so following these cases the claim form should be rejected as the prospective respondent on the EC certificate was different to the respondent on the ET1.

Submissions by claimants

17. The claimant said he made a mistake and had tried to correct it, writing to the Employment Tribunal several times, but he was confused by the names on the documents and could not get advice about how to proceed.

The law

18. Before 'relevant proceedings' can be issued in an employment tribunal, the prospective claimant must provide to ACAS prescribed information in the prescribed manner (section 18A Employment Tribunals Act 1996). The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.

19. The Schedule to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 SI2014/254 provides that an early conciliation form must contain the prospective claimant's name and address and the prospective respondent's name and address.

20. The Tribunal Rules: Schedule 1, Rule 12(1)(f), Employment Tribunals (Constitution & Rules of Procedure) Regs 2013, provide that a claim form shall be referred to an Employment Judge if the claim may be:

> "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."

21. Rule 12(2A) 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 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."

22. The first stage involves a judgment as to whether or not the difference in name and address is a minor error. If not, the claim must be rejected. If it is a minor error, there is a further judgment to be made as to whether it would not be in the interests of justice to reject the claim.

23. Rule 12(2A) is on its face is very clear, leading to rejection of the claim should the respondent's name not be the same on the EC certificate and the ET1 and where the difference is not minor. If the inconsistency between the respondent's name (on the EC form and the ET1) is only apparent after some time has lapsed, the claimant may be out of time to re-file with ACAS and lodge a further claim, so could be disadvantaged as a result. There are also some cases where the employee does not know the real name of their employer in which case mistakes are bound to happen and may cause injustice. This is not such a case.

24. In Mist v Derby Community Health Services NHS Trust UKEAT/0170/15 the EAT held that the ET had been entitled (applying Rule 12(2A) to accept the EC certificate and suggested that, in any event, the discrepancy between the name of the prospective respondent given on the EC certificate (The Royal Derby Hospital) and the name given on the ET1 (Derby Community Health Services NHS Trust) was minor and it would not be in the interests of justice to reject the claim. It is to be noted that the respondent in Mist did not take issue with the EC certificate in their ET3 and the EAT did not know what view had been take on the naming of the First Respondent. EAT in Mist said that any decision not to reject

the ET1 should have been taken at an earlier stage and it was not the decision under appeal so could not be cross-appealed.

25. In Giny v SNA Transport**,** UKEAT/0317/16/RN, a case very similar to this, the claimant identified an individual as his employer and prospective respondent, rather than the company so ACAS issued an early conciliation certificate with the individual's name. The claimant issued his ET1 claim form with the respondent correctly named. The Employment Judge rejected the claim under rule 12(2A) Tribunal Rules saying that the difference between the name on the EC certificate and the ET1 was not a minor error. The EAT rejected the claimant's submission to the effect that it was sufficient compliance with the EC rules if the information given enabled ACAS to make contact with the true employer. The EAT said that, although sympathetic to the claimant, it was not appropriate to put any gloss on the simple and straightforward language of the Rule as the effect of such a gloss would be to foster further legal technical arguments of the type which have been deprecated. The EAT in Giny referred to Mist.

26. The position in Chard v Trowbridge Office Cleaning Services Ltd *UKEAT/0254/16* was distinguished because of the close links between the individual respondent and the respondent company, the individual being the controlling shareholder of the Respondent company, who was named instead of the company. In Chard although they were legally distinct the EAT considered it was effectively the same operation and the decision maker was the same, so that the error was minor and the claim proceeded. The EAT in Giny referred to Chard.

27. Rule 34 Tribunal Rules provides that the Tribunal may on its own initiative, or on the application of a part or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings and may remove any party apparently wrongly included. It is arguable that if a discrepancy is overlooked at the initial vetting stage, or not raised by the respondent, Rule 34 comes into play and there is more discretion to amend the claim. However, this was not the decision reached in Giny.

28. In relation to any application to amend there must be a live claim which can be amended. In Cocking v Sandhurst (Stationers) Ltd 1974 ICR 650 NIRC it was held that before considering whether to add or substitute respondents, the question was whether the unamended application complied with the Tribunal rules (see Rule 8(1) schedule 1 to 2013 Regulations). If it did not, there is no power to amend and a new application (claim) must be presented.

Conclusion

29. I find that the difference between the name of the respondent in the ACAS EC certificate and the ET1 was not minor. They were completely different names: RATP DEV London on the EC certificate and Ray Clapson on the ET1, though London Sovereign was included in the address line on the ET1. I accept the claimant was confused and made a mistake but Rule 12 (1)(f) and rule 12 (2A) are, as stated in Giny, very clear.

30. Mr Clapson was a new Manager so the situation was very different to that in *Chard.* There was not the close link between Mr Clapson and London Sovereign as there was in *Chard.* I can understand how the claimant was mistaken about his employer's identity, but would add that this was not due to the respondent.

31. The situation in this case is very similar to that in Giny v SNA Transport where the EAT rejected a purposive interpretation saying that it was not appropriate to put any gloss on the simple language of the Rule. Having said that, the situation may be different if the employer's identity was unclear so that the claimant could not reasonably identify the correct respondent as that could lead to injustice to the claimant.

32. A claim that must be rejected cannot be amended. There needs to be a validly presented claim before considering any amendment and this was not a validly presented claim so it cannot be amended.

33. For these reasons I find that the tribunal does not have jurisdiction to hear the claimant's claims and they are dismissed.

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Employment Judge C Palmer

17/7/18

Sent to the parties on:

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For the Tribunal:

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