EMPLOYMENT TRIBUNALS

Claimant: Mr N Wainwright

Respondent Alliance Healthcare Management Services Limited

JUDGMENT
ON A RECONSIDERATION

The respondent's application for reconsideration of the decision to accept the claim and for reconsideration of the decision to grant the claimant's application to amend the title of the respondent is refused.

REASONS

There is no reasonable prospect of the original decision(s) being varied or revoked, because:

1. I have considered the respondent's application for reconsideration of the decision to accept the claim and for reconsideration of the decision to grant the claimant's application to amend the title of the respondent. The application was contained within the respondent's response and received by the Tribunal on 27 August 2019 and follows a previous application dated 8 August 2019. I have taken the contents of the response into account.

Rules of Procedure

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.

3. The test is whether it is necessary in the interests of justice to reconsider the decision (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence or information comes to light which could have a material bearing on the outcome.

Background

4. On 21 July 2019, the claimant submitted his claim to the Tribunal. In the claim form he named Jamie Dluzewski as the respondent together with the address of his former employer and provided an Early Conciliation reference number: R504069/19/69. The Early Conciliation certificate named as prospective respondent: "Alliance Healthcare" and the address was as stated in the claim form.

5. On 5 August 2019, the claimant's representative wrote to the Tribunal to request that the name of the respondent be amended from Jamie Dluzewski to Alliance Healthcare Limited.

6. On 8 August 2019, the respondent's representative wrote to the Tribunal top object to the amendment sought and to apply for strike out of the claim for want of jurisdiction on the basis that the claim had named a respondent against whom the claimant had not entered Early Conciliation. The respondent's representative pointed out that Jamie Dluzewski "was simply the dismissing officer on behalf of Alliance Healthcare Management Services Limited". The respondent's representative contended that the claim form should have been rejected by the Tribunal under Rule 12(1)(f) and that the difference in names was more than a minor error. In addition, it was suggested that the claimant had been supported by his trade union throughout.

7. On 12 August 2019, the claimant's representative wrote to the Tribunal to object to the respondent's application to strike out the claim and to point out that the claimant had submitted his claim form without union support. It was contended that the naming of the dismissing manager was an error and that the address of the respondent was correct.

8. On 14 August 2019, I considered the applications above and decided that the name of the respondent shall be corrected to Alliance Healthcare as stated in the Early Conciliation certificate on the basis that the claimant had made a minor error and that it would not be in the interests of justice to reject the claim. The application for strike out was therefore refused.

The application

9. On 27 August 2019, a response to the claim was received at the Tribunal from Alliance Healthcare Management Services Limited. In the statement of grounds of resistance, the respondent raises jurisdiction and the issue of the respondent as named in the claim form compared to that on the Early Conciliation certificate. The respondent contends that the claim should have been rejected by the Tribunal under Rule 12(1)(f) because it says that the difference in name is not a minor error. It is contended that the claimant has not entered Early Conciliation against the respondent

named in the claim form, Jamie Dluzewski, and that the claimant has not submitted a claim within the applicable time limit against his employer, Alliance Healthcare Management Services Limited. The respondent does not take issue with the fact that the prospective respondent named on the Early Conciliation certificate, Alliance Healthcare, is not the precise name of the claimant's employer. The grounds of resistance then go on to plead a response to the claim on behalf of Alliance Healthcare Management Services Limited "In the event that the claimant's claim is not struck out, …"

The Employment Tribunal Rules

10. Pursuant to Rule 12(1)(f) a claim form shall be rejected if 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. The claim form must be rejected unless pursuant to Rule 12(2A) the Employment Judge considers that the claimant made a minor error in relation to a name or address and that it would not be in the interests of justice to reject the claim.

11. Rule 34 provides that the Tribunal may, on its own initiative or on the application of a party, add any person as a party, by way of substitution or otherwise, if it appears 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. The Tribunal may also remove any party apparently wrongly included.

12. E.ON Control Solutions Limited v Caspall UKEAT/0003/19 provides that Rule 6 of the Employment Tribunal Rules cannot import a discretion into a mandatory rule; the correct procedure in the circumstances of that case was under Rule 13, by way of reconsideration of a rejection. In this case, however, the claim was not rejected and so the respondent's application is dealt with by way of reconsideration under Rules 70 – 72.

Analysis

13. In this case, the claim form was not rejected under Rule 12(1)(f) because I exercised my power under Rule 12 (2A). I considered that the claimant had made a minor error in relation to the respondent's name and also that it would not be in interests of justice to reject the claim.

14. The claimant named Mr Dluzewski as respondent, although he is not the claimant's employer. He is in fact the dismissing officer of the claimant's employer. The claim form was served by the Tribunal on Mr Dluzewski at the address given in the claim form which is the work address, being that of Alliance Healthcare. That address is as stated on the Early Conciliation certificate. The claimant had not given Mr Dluzewski's home address. Those circumstances suggest that the claimant's intention was to bring a

claim against his employer, albeit that he named Mr Dluzewski, being the officer of the employer who made the decision which is to be challenged. There is no ambiguity as to the employer.

15. I note that, in the claim form section 2, claimants are asked to name "the employer, person or organisation against whom you are making a claim." I consider that wording may lead a claimant who is not legally qualified or familiar with the legal process to name the dismissing officer of the employer as the 'person' against whom they are claiming unfair dismissal.

16. The claim form must have been passed on by Mr Dluzewski to his employer, Alliance Healthcare, because the letter of application dated 8 August 2019 was written by solicitors said to be acting for Mr Dluzewski and also for Alliance Healthcare Management Limited.

17. After my decision to accept the claim and to allow an amendment to the name of the respondent, a response to the claim was presented by the solicitors on instructions from Alliance Healthcare Management Services Limited. The response confirms that that company is the claimant's employer. In the grounds of resistance attached to the response, paragraph 3, the respondent acknowledges that the claimant has named its dismissing officer as respondent. From the contents of the response, I consider that Alliance Healthcare Management Services Limited understands that the claim was intended to be brought against it.

18. The respondent has stated that the difference in name is in its view more than a minor error. However, it has provided no reasoning for that view. I have considered the Judgment of the EAT in Chard v Trowbridge Office Cleaning Services Limited UKEAT/0254/16 in which Mr Justice Kerr held that whether an error is or is not minor is a question of fact and degree and that an error in relation to a name (or address) can be minor, even though it is more than just a spelling error or typographical error. In Chard, it was held that the claimant's error in giving the name of the controlling shareholder to ACAS for Early Conciliation rather than the limited company employer was a minor error.

19. In this case, Mr Dluzewski and Alliance Healthcare are very closely linked as were the named respondents in Chard. The factual position points to a conclusion that the error made by Mr Wainwright is akin to that in Chard and the respondent company knew that it was against it that he intended to proceed, not Mr Dluzewski personally.

20. The Tribunal is entitled, applying Rule 12(2A) to accept the name on the Early Conciliation certificate as determinative.[1] Hence I considered that Alliance Healthcare is the correct and intended respondent.

[1] Mist v Derby Community Health Services NHS Trust UKEAT/0170/15

21. In addition, I take account of the fact that, upon spotting the error, his union representative made an application to amend and correct the named respondent on 5 August 2019. Applying Selkent principles in dealing with the application, I noted that the application to correct the name of the respondent was made promptly and within one day of the expiry of the applicable limitation period for the claim. The application explains that the error was due to the claimant acting in person and without union support. The respondent contends that the claimant had the benefit of trade union support during the disciplinary process and subsequently. However, I have concluded that the claimant submitted his claim form himself. He named a representative from his union albeit that he made an error in the representative's name, one which a representative would not have made.

22. I also considered the relative injustice and hardship to the parties. If the claim was rejected, the claimant would be denied the right to bring a claim whereas the respondent would avoid the proceedings on a technicality following a rigid application of the Rules which is inconsistent with the overriding objective. I do not think that Parliament intended that Early Conciliation should operate as a trap for claimants. In saying this, I am also mindful that Tribunals are urged to do their best not to place an artificial barrier in the way of genuine claims[2]

23. I consider that the claimant's error is not a wholesale failure. The claim is in a form that can sensibly be responded to and it is apparent that the employer can be identified albeit through its dismissing officer. The naming of the dismissing officer in those circumstances amounts to a technical defect that can easily be rectified. It is apparent to the respondent employer that the claimant wished to bring a case against it and, on that basis, it entered the response form. The grounds of resistance are pleaded in the alternative, and in contemplation of the possibility that the claimant's claim is not struck out for the error in the respondent's name. The respondent therefore anticipated that strike out would not necessarily follow.

24. For all the above reasons I considered that it would not be in the interests of justice to reject the claim or to refuse the application to amend.

Conclusion

25. Having considered all the points made by the respondent I am satisfied that there is no reasonable prospect of the original decisions being varied or revoked. The application for reconsideration is refused.

[2] Secretary of State for BEIS v Parry [2018] EWCA Civ 672 Bean LJ para 31

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Employment Judge Batten
Date: 25 September 2019

JUDGMENT SENT TO THE PARTIES ON:

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FOR THE TRIBUNAL OFFICE