



Case No. 1306842/2019

EMPLOYMENT TRIBUNALS

BETWEEN

Miss J Pryce

AND

Baxterstorey Limited

Claimant

Respondent

JUDGMENT

The Claimant's complaints made within her Claim Form and received at the Employment Tribunal on 23 August are dismissed because the Tribunal does not have jurisdiction to consider them pursuant to section 18A (1) and (8) of the Employment Tribunals Act 1996.

REASONS

- 1) This matter was listed before me on 3 February 2020 for a Closed Preliminary Hearing to determine the issues in the case and to timetable the case to a final hearing.
- 2) Upon considering the papers before the parties came before me, I became aware of an issue that could affect the Tribunal's jurisdiction to hear the Claim and I raised the issue with the parties at the start of the hearing. Neither party had raised the specific point of concern in the agendas that they had prepared for the case.
- 3) The issue concerns ACAS Early Conciliation. Pursuant to Rule 18A of the Employment Tribunals Act 1996 and, in particular, sub section (8) thereof, an application to institute relevant proceedings may not be presented without an Early Conciliation Certificate. That is subject to the exemptions that are available.
- 4) From the documentation that I have on the Tribunal file, the Claim was issued on 23 August 2019 and a certificate was not issued until 27 August 2019 and

so it would appear that there was no certificate in place on the date the claim was issued.

- 5) It was agreed that the parties would take time to reflect on their positions and would then make written representations on the point upon which I would determine whether or not the Tribunal had jurisdiction to consider the claims.
- 6) On 3 February at 1903 the Claimant emailed the Tribunal and indicated that **“if you have made a claim under the public interest disclosure act the claim wouldn’t be required to have a certificate (sic)”**. As a statement of law that is not correct.
- 7) On 6 February at 1509 the Claimant wrote again saying (so far as is relevant):
**“I would like to admit that I am at fault for not going to ACAS before my claim form was submitted to the tribunal. I have never been to an employment tribunal before...

I would like to make you aware that had I known that I was to seek ACAS prior to a form being submitted, if the form had have been returned to me within the jurisdiction period and I had been advised accordingly I would have been through the necessary channels to submit my claim according to employment tribunal legal procedures.”**
- 8) On 6 February at 1539 Ms Scamman from the Respondent’s solicitors emailed a letter to the Tribunal setting out their position. Their position can be simply put:
 - a) As at the date of bringing the claim there was no ACAS EC Certificate;
 - b) The claims brought by the Claimant race discrimination, sex discrimination and unpaid holiday pay are all “relevant proceedings” for which an ACAS EC Certificate is required prior to bringing a claim. The Respondent further, whilst not accepting that a whistleblowing claim has been brought, contended that such a claim was also “relevant proceedings.”
 - c) As none of the exemptions apply then the Claims should be dismissed as the Tribunal has no jurisdiction to hear them.
- 9) On the Claim Form, issued on 23 August 2019, the Claimant ticked the box confirming that she did not have an ACAS EC Certificate and indicated that ACAS did not have the power to conciliate on some or all of the claim. That assertion is not correct on the information I have and, indeed, is accepted by the Claimant in her last email.
- 10) The Claim was placed before an Employment Judge on 12 September 2019 by one of the Tribunal Staff saying **“No EC Certificate. Shall we reject?”** There is a clear indication from the Judge that it should be rejected. It is clear from the file that all that was before the Judge at that stage was the Claim Form.
- 11) Prior to the rejection being sent out the file was re referred to a Judge on 19 September and attached to that referral was a letter sent to the Tribunal on 27 August 2019 in which the Claimant wrote:
“On 23 August 2019 I applied for an Employment Tribunal case to be heard but at the time I missed the ACAS certificate off the form and I would really appreciate this reference number being added to the form in order

for my case to proceed. Please find attached the certificate number in question. Thank you.

Attached to that email was an EC Certificate issued on 27 August 2019 having been started on 23 August 2019. There is nothing unusual about an email finding its way onto the file some days after it was sent.

- 12) The referral said: ***“We now have ECC shall we accept and serve.”*** To which the answer was ***“Yes”***. It appears from the Claimant’s email that she was aware of the need for an ACAS Certificate at all material times. The Claimant infers in her email that the ACAS EC number was missed off the sheet by inadvertence whereas of course it could never have been placed on the form on 23 August as there was no EC number or certificate at that stage. The most likely scenario in my Judgment is that the Claimant knew that she needed an EC certificate number but ticked an exemption box to enable the claim to be issued on 23 August whilst on the same day entering Early Conciliation and then seeking to amend at a later point when she got the certificate.
- 13) The non-compliance with EC perhaps should have been spotted on 19 September but it was not, and the Claim was accepted and an ET2 was sent out seeking a Response.
- 14) This is a jurisdictional matter and I do not have any discretion under it. This Claim was lodged prior to an EC Certificate being issued in circumstances where having one is a mandatory prerequisite to bringing a Claim. None of the exemptions apply. Accordingly, these Claims must be dismissed. It is a matter for the Claimant as to whether she brings these claims again. If she does so then consideration will be given as to whether the Tribunal has jurisdiction to consider them taking into account time limits and the relevant statutory provisions for extending the same.

Employment Judge Self

18/02/2020