



EMPLOYMENT TRIBUNALS

At an Open Preliminary Hearing by Cloud Video Platform (CVP)

Claimant: Miss R Patel
Respondent: Leicester City Council
Heard at: Leicester (remotely by CVP)
On: 17 December 2020
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: Miss Tara O'Halloran of Counsel, instructed by Thompsons
Respondent: Mr James Arnold of Counsel, instructed by Leicester City Council

JUDGMENT having been sent to the parties on 3 February 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT

The decision of 11 May 2020 (to reject the claim) is reconsidered and is hereby revoked. The fresh decision is that the claim is accepted. The date of acceptance of the Claim is 1 May 2020. The Claimant is therefore entitled to pursue her complaint of unfair dismissal.

REASONS

1. These reasons follow a request by the Claimant and the Respondent of a decision made at a Preliminary Hearing before an Employment Judge sitting alone on 17 December 2020. The decision was announced orally at the conclusion of the hearing. The Judgment was sent to the parties on 3 February 2021.
2. In these proceedings the Claimant brings claims of unfair dismissal, direct race and sex discrimination and victimisation.

3. The Claimant was employed by Leicester City Council as a Resilience Officer from 1 July 1988 to 10 December 2019, which is agreed as the 'effective date of termination'.
4. The Claimant entered early conciliation on 4 March 2020. The Early Conciliation Certificate was issued on 2 April 2020. The early conciliation certificate correctly cited 'Leicester City Council' as the name of the prospective Respondent.
5. On 1 May 2020, the Claimant presented her Claim Form (ET1) to the Employment Tribunal. The name of the Respondent given on the ET1 was "*Leicestershire City Council*".
6. On 11 May 2020, the Claim Form was referred by a clerk to an Employment Judge during the process of vetting. This happens when a clerk considers that there is a potential reason for not accepting a Claim Form. In this case it was done because the name of the prospective Respondent on the ET1 did not correspond with the name of the prospective Respondent on the ACAS Early Conciliation Certificate. The referral came to myself as the duty Judge on the day. On the basis of the discrepancy between the name of the Respondent on the ET1 and the early conciliation certificate, I rejected the Claim.
7. On 21 May 2020, the Claimant made an application to reconsider the decision to reject acceptance of the Claim Form. The thrust of the application was that the error was only a "minor error" and that it was not in the interests of justice to reject it. Within the letter the Claimant's solicitors, Messrs Thompsons, set out a number of legal arguments on the issue. Such correspondence is not copied to the Respondent.
8. On 2 June 2020, I directed the following letter to be sent to Messrs Thompsons:

"After a reconsideration by Employment Judge Ahmed the whole claim is now accepted.

Because the original decision to reject the claim was correct but the defect which led to the rejection has since been rectified, the claim form is to be treated as having been received on 21/05/2020....."
9. It is agreed that the consequence of the decision is that the Claim is then one day late and is thus out of time for the purposes of the unfair dismissal claim.
10. On 24 August 2020 at a Preliminary Hearing before my colleague, Employment Judge Rachel Broughton, the Respondent identified that whilst the claim was now accepted, it was however presented out of time. That would be particularly important in relation to the unfair dismissal claim where the extension provisions are subject to the 'not reasonably practicable test'.

11. On 28 August 2020, the Claimant made an application (which is the subject of this hearing) for a reconsideration of the Tribunal's decision to reject the claim of 11 May 2020;

The issues

12. The issues are as follows:-
- 12.1 To determine the Claimant's application for a reconsideration of the decision to reject the claim on 11 May 2020 ("the 11 May decision").
 - 12.2 In the event that the claim is found to be presented out of time, whether it was reasonably practicable to have presented the claim in time.

THE LAW

13. The relevant rules from the Employment Tribunals are as follows:

Rule 5 Extending or shortening time

"The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired."

Rule 12 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;
- (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;
- (da) one which institutes relevant proceedings and the early conciliation number on the claim form is not the same as the early conciliation number on the early conciliation certificate;
- (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) (c) 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.

Rule 13 Reconsideration of rejection

“ (1) A claimant whose claim has been rejected (in whole or in part) under rule 10 or 12 may apply for a reconsideration on the basis that either—

(a) the decision to reject was wrong; or

(b) the notified defect can be rectified.

(4) If the Judge decides that the original rejection was correct but that the defect has been rectified, the claim shall be treated as presented on the date that the defect was rectified.”

Rule 70 - Reconsiderations of Judgments

“A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.”

14. I decided to reject the claim at the vetting stage because there is no such body as Leicestershire City Council. There are two local authorities in Leicester - Leicester City Council and Leicestershire County Council. They are entirely separate bodies. The address for service of the on “the Respondent” is that of Leicester City Council. They are not taken by surprise or in any way prejudiced by the error.
15. Having heard submissions from Counsel on both sides today, and upon reflection, I accept that my decision of 11 May decision was an error. The Claimant’s typographical mistake should have been categorised as a “minor error” within the meaning of Rule 12(2A) and the claim form should have been accepted. It was in the interests of justice not to reject the claim

because to do so would cause the Claimant considerable hardship in that she would potentially be shut out of an unfair dismissal claim.

16. In coming to my decision I have had regard in particular to the case of **Mist v Derby Community Health Services NHS Trust** [UKEAT/0170/15]. In that case the Claimant gave the name of “The Royal Derby Hospital” for the purposes of the conciliation certificate but the name on the ET1 was “Derby Community Health Services NHS Trust”. The EAT held that in that case that the difference was ‘minor’. The discrepancy in this case is considerably less than that in **Mist**. It is only a typing error, adding unnecessarily the word ‘shire’.
17. I am satisfied insofar as it is necessary to say so that the proper provision for reconsideration of the decision is Rule 13(1)(a) and not Rule 70. Rule 13 is clearly intended to deal with Rule 12 rejections as is apparent from the plain and clear wording of Rule 13(1). There is also nothing in the Rules to say that a decision which was originally wrong under Rule 12 cannot be corrected later or taken a second time. Insofar as it is necessary I exercise the general power under Rule 5 to extend time to consider the present application.
18. Accordingly, the decision to reject the claim of 11 May 2020 is revoked and is set aside. The claim is deemed to have been accepted on 1 May 2020 and is in time. It is unnecessary for me to consider whether time should be extended on not reasonably practicable grounds for the unfair dismissal complaint.

Employment Judge Ahmed

Date: 15 March 2021

COVID STATEMENT: This was a remote hearing by Cloud Video Platform (CVP) which was not objected to by the parties [V]. A face to face hearing was not held because it was not practicable due to the Covid-19 Pandemic. All the issues could be determined in a remote hearing.

REASONS SENT TO THE PARTIES ON

16 March 2021

FOR THE TRIBUNAL OFFICE

