



EMPLOYMENT TRIBUNALS

Claimant

Mr D Butti

Respondent

Kier Group Plc

v

Heard at: Bury St Edmunds

On: 27 January 2020

Before: Employment Judge KJ Palmer

Appearances

For the Claimant: Ms M Tether (Counsel).

For the Respondent: Ms Jennings (Counsel).

JUDGMENT PURSUANT TO A PRELIMINARY HEARING

It is the Judgment of this Tribunal that it has no jurisdiction to hear the claimant's claims in case number 3319915/2019. The claimant's claims are rejected.

REASONS

1. This matter came before me today as a preliminary hearing to determine whether the Tribunal has jurisdiction to hear the Claimant's claims given that the ACAS certificate was not obtained prior to the issue of proceedings. If the Tribunal has jurisdiction whether the claim was received in time, and if not, whether the Tribunal should exercise its discretion to extend time to validate the claim.

Brief History

2. The claimant presented an ET1 to this Tribunal on 1 July 2019. In that ET1 prescribed form the claimant failed to include an ACAS Early Conciliation Certificate number. It is common ground that this was not a claim that was subject to the exemptions and that it was therefore necessary for the claimant to comply with the Employment Tribunals Act 1996 section 18A.

3. Accordingly, the claim was rejected under rule 10 of Employment Tribunal Rules, rule 10C(1) for not having an early conciliation number. That rejection was sent to the claimant on 9 July 2019.
4. Pursuant to that the claimant then contacted ACAS and obtained an early conciliation certificate. He initiated the contact on 12 July 2019 and the early conciliation certificate was dated 19 July 2019. He then sent this to the Tribunal.
5. An Employment Tribunal Judge then considered the claimant's application as a reconsideration under rule 13 of the Employment Tribunal Rules of Procedure and granted it, presumably under rule 13(4).
6. The respondent then filed an ET3. The matter was set down for a preliminary hearing today, converted to an open preliminary hearing to consider the point as to jurisdiction.
7. Essentially in the ET3 the respondent argues that as a result of the claimant's original failure the Tribunal has no jurisdiction to hear the claimant's claims. They are bound to reject the claim.
8. They go on to say that in the alternative, even if the later production of an Early Conciliation Certificate does rectify the earlier failure then the claimant's claim is in any event out of time having been lodged on the day the rectification was completed being the 19 July 2019 when time expired on 11 July 2019.
9. I have before me a counsel for both parties.
10. Ms Jennings argued that under the recent EAT case of **EON Control Solutions Ltd v Caspall** UKEAT/0003/19/JOJ in that she points out that it is a mandatory rule.
11. Counsel for the claimant agrees and does not pursue an argument that the claim should survive. She agrees the claim has to be rejected.
12. Accordingly, I reject the claim.
13. It is worth mentioning that there is a second claim which was not before me today and which has not been incorporated in the first which also appears to have a similar problem, that is the claim under case number 3323491/2019. That claim was presented on 23 September 2019 with no early conciliation certificate number attached.

14. That matter is not before me today but it may be wise for some case management of that matter also to take place.

Employment Judge KJ Palmer

Date: 6 February 2020

Sent to the parties on:

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For the Tribunal Office