



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr R Hurrymun

v

**Respondent:**  
Berkshire Healthcare NHS  
Foundation Trust

## PRELIMINARY HEARING

**Heard at:** Reading **On:** 11 June 2018

**Before:** Employment Judge Milner-Moore (sitting alone)

### Appearances

**For the Claimant:** In person  
**For the Respondent:** Mr D Dyal of Counsel

## JUDGMENT

1. The claim stands dismissed.
2. The tribunal has no jurisdiction to consider the claim, it being a claim to which the early conciliation procedures apply and those procedures not having been complied with.

## REASONS

1. The claimant was employed by the respondent until 19 January 2017. He filed an ET1 with the tribunal on 18 July 2017 alleging that he had been unfairly dismissed, subjected to race discrimination, and had not received the correct redundancy payment. In the form ET1, the claimant answered "No" to the question "Do you have an ACAS early conciliation certificate number?" and in response to the question "If no, why don't you have this number?" ticked the box that says, "ACAS doesn't have the power to conciliate on some or all of my claim". It is relevant to note that the form ET1 completed by the claimant includes an information note relating to this part of the form which reads as follows: "Nearly everyone should have this number (the ACAS early conciliation number) before they fill in a claim form. You can find it on your ACAS certificate. For help and advice, call ACAS... or visit [www.acas.org.uk](http://www.acas.org.uk)".
2. On 26 October 2017, Employment Judge Gumbiti-Zimuto issued an unless order in the following terms "Having considered the file, Employment Judge Gumbiti-Zimuto is of the view that the tribunal has no jurisdiction to consider the claim. This is a claim to which early conciliation applies. The claimant has

*not followed the correct procedure. Employment Judge Gumbiti-Zimuto orders that the claims will stand dismissed on 6 November 2017 without further order, unless **before that date** [emphasis added] the claimant has explained in writing why the claim should not be dismissed."*

3. The claimant did reply to the unless order but did not do so within the time limit appointed. He sent his reply on 6 November setting out reasons why he wished to have his case heard but not addressing the question of his failure to comply with the ACAS conciliation procedure. Technically therefore, the claim stood dismissed as of 6 November 2017. However, on 23 December 2017, in light of the further representations submitted by the claimant Employment Judge Gumbiti-Zimuto directed that a hearing be listed under rule 27(3) of the Employment Tribunals Rules of Procedure 2013 whether the claim should be permitted to proceed,
4. At this morning's hearing, the claimant explained to me that he had been in contact with ACAS but had not found them very helpful and had felt that they were not giving him the correct advice. Although he had received a letter from ACAS sent to him after he had begun the tribunal proceedings indicating that they would be prepared to assist him, he had not obtained a conciliation certificate. Although he had ticked the box indicating that the requirement for a conciliation certificate did not apply in his case, that simply reflected his perception that ACAS had been unhelpful when he contacted them for advice.
5. I explained to the claimant the types of case which were excluded from the requirement to engage in pre-claim ACAS conciliation (as listed in the 2014 Regulations at regulation 3) and he accepted that none of those exclusions applied to his case.
6. The respondent noted that not being satisfied with the advice received from ACAS is not a ground of exemption from the requirement to engage in pre-claim conciliation. That requirement is a statutory one and in light of the claimant's failure, the tribunal has no discretion but to reject the claim. The respondent's representative noted that the claim technically already stood dismissed as a result of the unless order that had been made. That need not be the end of the matter because it would be open to the tribunal to reinstate the claim if there were a good basis to do so (Section 38(2) of the Employment Tribunals Rules of Procedure 2013). However, whether applying rule 27(3) or whether considering relief from sanction under rule 38(2), the essential point was the same; the tribunal had no jurisdiction due to the operation of section 18A of the Employment Tribunals Act and the claim must be dismissed.

## Law

7. Section 18 of the Employment Tribunals Act defines the "*relevant proceedings*" which may only be commenced after the pre-claim ACAS conciliation process has been undertaken. The relevant proceedings include proceedings under section 111 Employment Rights Act 1996 (unfair dismissal), section 163 Employment Rights Act 1996 (claim for a redundancy payment) and section 120 Equality Act 2010 (race discrimination).

8. Under section 18A(1) of the Employment Tribunals Act 1996, a claimant is obliged to provide "*prescribed information*" to ACAS before instituting any relevant proceedings. ACAS then engage in conciliation and, after doing so, provide a conciliation certificate to the claimant. Section 18A (8) states that a claimant may not begin relevant proceedings without a conciliation certificate. Section 18A(7) provides that the requirement for pre-claim conciliation does not apply in certain "*prescribed cases*" and these are detailed in the Employment Tribunals (Early Conciliation: Exemptions from Rules of Procedure) Regulations 2014 at regulation 3.
9. The claim stood dismissed as a result of the claimant's failure to comply with the unless order made by Employment Judge Gumbiti-Zimuto on 24 October 2017. That dismissal occurred automatically once the unless order had been breached. Rule 38(2) of the Employment Tribunals Rules of Procedure 2013 would allow a tribunal to reinstate a claim which has been dismissed following breach of an unless order where it is "*in the interests of justice to do so*".

### Conclusions

10. I do not consider it in the interests of justice to reinstate the claim. It is clear that, as a result of the claimant's failure to obtain an ACAS conciliation certificate, the Tribunal has no jurisdiction to hear the proceedings. That lack of jurisdiction flows from the provisions of section 18A of the Employment Tribunals Act 1996. It is not a matter of discretion. It is an absolute statutory requirement that a conciliation certificate be obtained unless the claim falls within the "*prescribed cases*" listed at regulation 3 of the 2014 Regulations cited above. It is clear that the instant claims do not fall within any of the "*prescribed cases*". Therefore, as a result of the claimant's failure to obtain an ACAS conciliation certificate, the tribunal has no jurisdiction to hear his claim and I decline to reinstate the claim.

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Employment Judge Milner-Moore

Date: 28 June 2018

Sent to the parties on: .....