



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondents**

**Mrs M McWade**

**v**

**(1)  
(2)**

**FedEx Express UK Ltd  
Emma Symons**

**Held at: East London Hearing Centre**

**On: 04 September 2020**

**Regional Employment Judge Taylor**

**Appearances:**

**For Claimant: In person**

## JUDGMENT

**Following an application for reconsideration of part rejection of the claim**

**The claimant's application for reconsideration of the decision to part reject her claim is dismissed.**

**Application, issues and general matters**

1. The claimant presented a claim form on 29 June 2020 identifying as respondents FedEx Express UK Ltd, her employer and Emma Symons (a manager).
2. The claimant had obtained an Early Conciliation Certificate ("ECC") naming FedEx Express UK Ltd as the prospective respondent. The EC number was RS 134598/20/48.
3. The date of receipt by Acas of the Early Conciliation ("EC") notification was 1 April 2020 and the date of issue of the ECC was 1 May 2020. The claimant also gave the same certificate number for her claim against Ms Symons.
4. The claim brought against Ms Symons was rejected by the tribunal because the claimant had not complied with rule 10(1)(c) of the Employment Tribunals Rules of

Procedure 2013. Under that rule the claimant was required to provide a separate ECC number for Ms Symons.

5. This matter was listed before the tribunal today because, by email dated 5 August 2020, the claimant applied for reconsideration of this part rejection of her claim under Rule 13(3) Employment Tribunals Rules of Procedure 2013.

6. The respondent was not required to take part in this application for reconsideration.

### **The applicable law**

7. The EC scheme is set out in sections 18A and 18B of the Employment Tribunals Act 1996 (ETA), and in the Early Conciliation Rules of Procedure ('the EC Rules') contained in the Schedule to the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 SI 2014/254 ('the EC Regulations').

8. In relevant proceedings, the procedure requires the potential claimant to inform Acas that he or she intends to bring a claim. If the claimant agrees to EC, Acas instructs a conciliator. The Acas conciliator has one month to attempt to resolve the dispute between the parties. If settlement is not reached, or if either party decides at any point not to continue to participate in conciliation, the Acas conciliator issues the claimant with an EC certificate. The prospective claimant may then bring a claim against the prospective respondent.

9. A claimant will not normally be allowed to bring a claim in an employment tribunal unless he or she has first informed Acas of the complaint, thereby giving Acas the opportunity to try to resolve the case by 'early conciliation'.

10. Clearly, a party cannot participate in trying to resolve the case if the claimant has not informed Acas that they are prospective respondent.

11. Rule 10 Employment Tribunals Rules of Procedure 2013 provides:

10.— Rejection: form not used or failure to supply minimum information

- (1) the tribunal shall reject a claim if .....
- (c) it does not contain one of the following—
  - (i) an early conciliation number;
  - (ii) confirmation that the claim does not institute any relevant proceedings; or
  - (iii) confirmation that one of the early conciliation exemptions applies.

12. Therefore the requirement to provide a unique reference number of the EC certificate for each claim is mandatory.

13. The claimant relied on the following cases: Commissioners for HM Revenue and Customs v Serra Garau [2017] ICR 1121 and in the alternative Mist v Derby Community NHS Trust UKEAT/0170/15 in her application for reconsideration of the decision to reject her claim against Ms Symons.

14. Commissioners for HM Revenue and Customs v Garau (2017) ICR 1121 is a case that concerns the impact on the limitation period of a second early conciliation certificate presented in the same matter. Mist v Derby Community NHS Trust UKEAT/0170/15 concerns the identification of the correct respondent following a transfer of undertakings. Neither of these cases are relevant to the circumstances of this claim and therefore they do not assist the determination of the claimant's application.

15. A case relevant to the issues raised in the present case is E.ON Control Solutions Ltd v Caspall [2020] ICR 552 in which it was held that if an employment tribunal claim form contained an inaccurate Acas Early Conciliation Certificate number, the tribunal was mandated by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Sch.1 para.10(c) and para.12(1)(c) to reject the claim. In that case, the tribunal had erred in allowing a claimant to amend his claim to correct the certificate number whether under its case management powers, the power to waive or vary any requirement under the rules, or the overriding objective.

### **The conclusion**

16. The requirement to provide an Acas Early Conciliation Certificate when presenting a claim, in relevant proceedings, is mandatory. The claimant did not provide such a certificate when she sought to bring a claim against the prospective respondent Ms Symons and therefore her claim was rejected, pursuant to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Sch.1 para.10(c) and para.12(1)(c).

17. The claimant's application for reconsideration of the decision to part reject her claim is therefore dismissed.

**Regional Employment Judge Taylor  
Date: 7 September 2020**