



## EMPLOYMENT TRIBUNALS

**Claimant** Ms Sheryl Pillai  
**Represented by** in person

**Respondent** Nightingales Retirement Care Limited  
**Represented by** Mr A MacPhail (counsel)

**Before:** Employment Judge Cheetham QC

**Preliminary Hearing held on 21 January 2021 at  
London South Employment Tribunal by Cloud Video Platform**

### JUDGMENT

1. The employment tribunal does not have jurisdiction to accept this claim, as there was a failure to obtain an ACAS Early Conciliation Certificate. The claim is therefore dismissed.
2. The Respondent's application for costs is refused.

### REASONS

1. *This has been a remote hearing on the papers, which the parties have not objected to. The form of remote hearing was: V – video, although the Claimant had to participate by phone, as she did not have a video connection. A face to face hearing was not held because it was not practicable and the issue of the future determination of the claim could be resolved without the need for such a hearing. The documents that I was referred to are those contained in the Tribunal case file.*
2. At a Preliminary Hearing on 7 August 2020, this hearing was listed to consider; “whether there was a valid ACAS Certificate”.

3. The law is clear on this issue. Under the Employment Tribunals Act 1996 s.18A 'Requirement to contact ACAS before instituting proceedings':

*(1) Before a person ("the prospective claimant") presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.*

*This is subject to subsection (7).*

*(2) On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.*

*(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.*

*(4) If—*

*(a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or*

*(b) the prescribed period expires without a settlement having been reached,*

*the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.*

...

*(7) A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases.*

*The cases that may be prescribed include (in particular)—*

*cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter;*

*cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are;*

*cases where section 18B applies because ACAS has been contacted by a person against whom relevant proceedings are being instituted.*

*(8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4).*

...

4. In this case, there is no dispute that the ET1 was filed without a Certificate being obtained and none of the exemptions apply. In fact, there was no interaction at all with ACAS before the claim was brought. It remains unclear to me why, in those circumstances, the claim was not rejected under Rule 12 and can only presume that there was an administrative oversight.
5. The Claimant told me that she did not understand this requirement, as she is not a lawyer. She was also very confused by a standard letter sent after

she had brought the claim, which referred to the availability of ACAS to assist the parties resolve their differences. As I explained (and as the Respondent had done in correspondence), that was not the same as an Early Conciliation Certificate.

6. Unfortunately the Claimant became quite upset during the hearing and said how unfair she found this process. Although I tried to explain as sensitively as possible that this was a legal requirement, rather than any vindictiveness on the tribunal's part, she clearly did not agree.
7. However, at no stage did the Claimant ever suggest that she had obtained a Certificate before issuing the claim and, quite obviously, she needed to do so, subject to any exemption. In this case, none of the exemptions applied. I therefore had no choice but to dismiss the claim.
8. After I had given my decision, Mr MacPhail made an application for costs on the basis that this hearing was wholly unnecessary. He said (by reference to emailed correspondence) that the Claimant had been made aware that her claim had no possible chance of success and that she would be at risk of a costs application if she continued. The Respondent had done what it could to help the Claimant understand the position. I read those emails and I agree with that summary. Mr MacPhail asked for costs in the sum of £450.
9. In principle, I agreed that this was a case where a costs order could be made, but from my questions to the Claimant, it was quite clear that she would not have any sufficient resources to meet any costs order. She is living on her own and her two children are in foster care. She is in receipt of Universal Credit and has not worked since September. Imposing a costs order, even in a very low sum, would have failed to take into account her complete inability to pay, which – under Rule 84 – the tribunal is entitled to do. I therefore made no order for costs.

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Employment Judge S Cheetham QC  
Dated 4 February 2021