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EMPLOYMENT TRIBUNALS

Claimant: Mr M R Alem
Respondent: Interr Limited
Before: Employment Judge Gardiner

JUDGMENT

The judgment of the Tribunal is that:-

The Claimant's employment tribunal claim is dismissed under Rule 27 of the Employment Tribunal Rules 2013. The claim ought to have been rejected at the outset under Rule 12(1)(c) of the ET Rules 2013. The claim was made on a Claim Form that did not contain either an early conciliation number or confirmation that one of the early conciliation exemptions applies. Early conciliation only took place after the date on which the Claim Form was presented.

REASONS

1. Before a claimant is entitled to issue employment tribunal proceedings, that claimant must have undertaken Early Conciliation and obtained an ACAS Early Conciliation Certificate. The claimant must enter the Early Conciliation Certificate number on the ET1 claim form process must have been started.
2. When these proceedings were first presented on 31 January 2022, the Claimant did not include an Early Conciliation Certificate number at paragraph 2.8 of the Claim Form. He ticked the box to say that he did not have an Early Conciliation Certificate number.
3. The next day, 1 February 2022, he instigated the Early Conciliation process. On 3 February 2022 he received his Early Conciliation Certificate number at the conclusion of the ACAS Early Conciliation process. This was R13057/22/08. On 24 February 2022, the Employment Tribunal accepted the Claim Form and served it on the Respondent. In its Response, the Respondent contested the Tribunal's

jurisdiction to consider the Claimant's claim because the Claimant had not completed the Early Conciliation procedure before presenting the claim.

4. There were subsequent attempts by the Tribunal to allow the Claimant an opportunity to explain his position in relation to this jurisdictional argument. Employment Judge Burgher considered the matter as set out in the Tribunal's letter dated 14 April 2022. Employment Judge Reid considered the matter again on 1 June 2022. On the same day, 1 June 2022, the Claimant referred to an email he had apparently sent to the Tribunal on 3 February 2022. It was worded as follows:

When I filed my tribunal claim, I forgot to put my acas certificate number
Claim Number 322020131900 ACAS EC Reference Number R13057/22/08.

5. He said he had spoken to Verna Roberts, one of the administrative staff, who had told him she would add the ACAS EC number to the claim. This may explain why the Claim Form was subsequently accepted.
6. The Claimant must be wrong in saying that he forgot to include the acas certificate number on the Claim Form. This is because as at 31 January 2022, there was no ACAS Certificate number for a potential claim between the Claimant and the Respondent. This number was only issued four days later, on 3 February 2022. Therefore, when the claim was presented, there was no ACAS number. The ACAS process had not been instigated, let alone completed. This is a necessary precondition before the Employment Tribunal has jurisdiction to consider an Employment Tribunal claim on its merits. It is required by Rule 12(1)(c). The requirement cannot be waived or rectified retrospectively.
7. The result is that the Tribunal's administrative staff were wrong to accept the claim. It must be dismissed under Rule 27 on the basis that the Tribunal has no jurisdiction to consider the claim.

Employment Judge Gardiner

Date: 8 September 2022