



EMPLOYMENT TRIBUNALS

Claimant: Mr G Mwesigye

Respondent: AFE Recruitment Ltd R1
Booker Ltd t/a Best Food Logistics R2

JUDGMENT

1. All claims against R2 are struck out.
2. The claims against R1 are not struck out, and the final hearing remains as listed.

REASONS

1. The requirements to go through early conciliation (“EC”), for ACAS to issue an EC certificate, and for a claimant who is not exempt to have a certificate before presenting a claim form, are contained in s 18A of the Employment Tribunals Act 1996, which says in part:
 - (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).
 - (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.
2. The Claimant's claim against R2 is not one which is exempt from those requirements.
 3. On the claim form, an early conciliation certificate number for R2 was stated.
 4. However, the Tribunal staff have not been able to trace a certificate with that number. (R2 has also seen no such certificate; in itself, that proves nothing, because certificates are not necessarily sent to prospective respondents by ACAS. Although, of course, if R2 had a copy, then that would show that the Claimant had gone through the early conciliation process, even if the Claimant and the Tribunal could not locate a copy).
 5. At a preliminary hearing in June 2024, the issue was discussed. The Claimant was ordered to provide a copy of the certificate with the number stated in the claim form, or any other early conciliation certificate which named R2.
 6. The Claimant has failed to provide a copy of the certificate itself. According to R2's representative's email of 11 October 2024 at 06:15, the Claimant has now provided a copy of early conciliation certificate R246152/24/00, which is dated 12 September 2024.
 7. Since the claim form was presented on 19 November 2023, no early conciliation certificate obtained later than that date can demonstrate with the requirements set out in Section 18A of the Employment Tribunals Act 1996.
 8. The Tribunal has the power (in appropriate circumstances) to waive or vary the requirements of the Rules. So a requirement of Rule 10 or Rule 12 (for example) can be waived under Rule 6. (See Sainsburys v Clark [2023] EWCA Civ 386).
 9. However, neither Rule 6 nor any other power gives judges the power to waive or vary the requirements of Section 18A. That section specifies when the Tribunal will / will not have jurisdiction to make decisions over particular proposed claims submitted by way of a claim form.
 10. There is no reasonable prospect of the Claimant demonstrating that he complied with the EC obligations for R2 and therefore no reasonable prospect of persuading the Tribunal that it has jurisdiction to decide that a claim against R2 was presented on 19 November 2023, by the act of naming that respondent in section 2.5 of the claim form.
 11. The claim against R2 is therefore struck out in accordance with Rule 37(1)(a). I am not going to address R2's arguments that there were also alternative grounds for strike out.
 12. On 5 December 2024, the Claimant's representative has submitted a document which is alleged to comply with the order for Further Information made at the hearing on 5 June 2024 (and sent to parties in writing on 5 August

2024). This is very late indeed, because it was supposed to have been done by 19 June 2024.

13. It would not be proportionate to strike out the claim against R1 at present. At present, a fair hearing can still take place as scheduled, provided the parties (having completed disclosure already, or else by 31 December 2024 at the latest), agree the final hearing bundle by **17 January 2025** and exchange witness statements by **31 January 2025**.
14. Any further breaches of orders, or any delays that exceed those mentioned in the previous paragraph, might lead to a decision that a fair hearing cannot be held between 5 and 10 March 2025. In turn, that might require a decision about whether to strike out the claim or response.

Employment Judge Quill

Date: 10 December 2024

JUDGMENT SENT TO THE PARTIES ON

16 December 2024

FOR THE TRIBUNAL OFFICE