



# EMPLOYMENT TRIBUNALS

**Claimant:** Radha Sarkar

**Respondent:** (1) Parvinder Singh Sethi and (2) Diksha Sethi

**Heard at:** Central London ET (CVP)

**On:** 18 October 2024

**Before:** Employment Judge Freshwater

## **Representation**

Claimant: Mr T Bashir (solicitor)

Respondent: Mr L Harris (counsel)

# RESERVED JUDGMENT

1. The claims are struck out in their entirety under Employment Tribunal Rule 37(1)(c) because the claimant has not complied with the Tribunal Rules.

# REASONS

## **Introduction**

1. The claimant is Ms Radha Sarkar. The respondents are Mr Parvinder Singh Sethi and Mrs Diksha Sethi.

## **Procedure and hearing**

2. This is a public preliminary hearing heard remotely by CVP.
3. A bundle of documents was provided by the respondent. There had been no direction from the tribunal about the provision of a bundle.
4. I heard submissions on behalf of the claimant and the respondents. The second respondent filed a witness statement. The claimant did not attend or give evidence to the tribunal.
5. Judgment was reserved.

## **Issues**

6. The issues to be determined were set out in an earlier case management hearing (on 14 May 2024) as follows:
- (i) Should the Claimant's Claim Form ET1 be accepted or rejected having regard to the requirements of Rule 10 of the Employment Tribunals Rules of Procedures 2013?
  - (ii) If the claim is accepted: Is the Claimant an "employee", a "worker", or a person working in some other capacity having regard to the provisions of Section 230 of the Employment Rights Act 1996?
  - (iii) If the Claimant is an "employee": Does the Claimant have continuity of employment for the requisite period of service to be entitled to maintain a claim alleging unfair dismissal?
  - (iv) In relation to the Claim alleging unlawful discrimination by reference to the protected characteristic of disability, was the Claimant a "disabled person" within the meaning of Section 6 of the Equality Act 2010 at the relevant times?
  - (v) Having regard to an application made by the Respondent should the Claimant's claims (or any part of those) be struck out? In the alternative should payment of a deposit be made a condition of the Claimant continuing her claims (or any part of those)?
  - (vi) Any consequential and further case management.
7. The respondent accepted the claimant's status as an employee at the start of this hearing, and so there was no need for me to consider the issue at paragraph 5(ii) above.
8. The parties agreed that the remainder of the issues needed to be determined.

## **Law**

### **The claim form**

9. Rule 8 of the Employment Tribunal Rules of Procedure 2013 states:
- "(1) A claim shall be started by presenting a completed claim form (using a prescribed form) in accordance with any practice direction."
10. Rule 10 of the Employment Tribunal Rules of Procedure 2013 states:
- "(1) The Tribunal shall reject a claim if—
- (a) it is not made on a prescribed form;
  - (b) it does not contain all of the following information—
    - (i) each claimant's name;
    - (ii) each claimant's address;
    - (iii) each respondent's name;
    - (iv) each respondent's address or
  - (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.

(2) The form shall be returned to the claimant with a notice of rejection explaining why it has been rejected. The notice shall contain information about how to apply for a reconsideration of the rejection.”

11. Rule 6 of the Employment Tribunal Rules 2013 states that:

“A failure to comply with any provision of these Rules (except rule 8(1), 16(1), 23 or 25) or any order of the Tribunal (except for an order under rules 38 or 39) does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include all or any of the following—

- (a) waiving or varying the requirement;
- (b) striking out the claim or the response, in whole or in part, in accordance with rule 37;
- (c) barring or restricting a party's participation in the proceedings;
- (d) awarding costs in accordance with rules 74 to 84.”

12. The case of Sainsbury's Supermarkets Limited v Maria Clark and Others [2023] EWCA Civ 386 deals with circumstances in which the requirements of Rule 10 are not complied with. In Sainsbury's the non-compliance related to the provision of early conciliation numbers rather than the claimant's address. However, the procedure to deal with non-compliance is relevant.

13. Paragraph 42 of the judgment in Sainsbury's states:

*“If the tribunal staff reject a claim under Rule 10 or an employment judge rejects it under Rule 12, the claimant may seek reconsideration on the basis that either the decision to reject was wrong or the notified defect can be rectified: see Rule 13(1). But if no such rejection occurs it is not in my view open to a respondent to argue at a later stage that the claim should have been rejected. The respondent's remedy is to raise any points about non-compliance with the Rules in their form ET3, or in appropriate cases at a later stage, and to seek dismissal of the claim under Rule 27 or apply for it to be struck out under Rule 37.”*

14. Rule 27 of the Employment Tribunal Rules of Procedure 2013 states that:

“(1) If the [Tribunal] considers either that [it] has no jurisdiction to consider the claim, or part of it, or that the claim, or part of it, has no reasonable prospect of success, [it] shall send a notice to the parties—

(a) setting out [the Tribunal’s] view and the reasons for it; and

(b) ordering that the claim, or the part in question, shall be dismissed on such date as is specified in the notice unless before that date the claimant has presented written representations to the Tribunal explaining why the claim (or part) should not be dismissed.

(2) If no such representations are received, the claim shall be dismissed from the date specified without further order (although the Tribunal shall write to the parties to confirm what has occurred).

(3) If representations are received within the specified time they shall be considered by [the Tribunal], who shall either permit the claim (or part) to proceed or fix a hearing for the purpose of deciding whether it should be permitted to do so. The respondent may, but need not, attend and participate in the hearing.

(4) If any part of the claim is permitted to proceed [the Tribunal] shall make a case management order.”

15. Rule 37 of the Employment Tribunal Rules of Procedure 2013 states that:

“(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.”

16. Rule 2 of the Employment Tribunal Rules of Procedure 2013 states:

“The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

### **Findings**

17. The claimant submitted an ET1 claim form that was accepted by the tribunal on 31 January 2024.
18. The ET1 form contained an address of “Briton Solicitors”. It was clear at this point that the address was that of the claimant’s solicitors.
19. The ET1 form was considered by the tribunal and issued on 4 March 2024. The claims at that point were: unfair dismissal, direct disability discrimination, age discrimination, wrongful dismissal and that the claimant was owed various payments.
20. The tribunal office appears to have not noticed that the address of the claimant was in fact that of her solicitor. This was an error.
21. The respondent submitted an ET3 that was received by the tribunal on 29 March 2024 . The response stated that the claim ought to be rejected for the failure to provide the required minimum information.
22. A case management hearing was held on 14 May 2024. At that hearing, the claimant confirmed the following claims were being brought:
  - (i) Unfair Dismissal;
  - (ii) Unlawful discrimination by reference to the protected characteristic of disability;
  - (iii) Breach of contract by reference to The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994;
  - (iv) Failure to provide a written statement of particulars of employment;
  - (v) Failure to provide a written itemised pay statement;
  - (vi) Unlawful deductions from wages;
  - (vii) Unpaid holiday pay due;
  - (viii) Failure to provide a written statement giving particulars of the reasons for dismissal;
  - (ix) Breach of The Working Time Regulations 1998 in relation to rest periods;

- (x) Victimisation;
- (xi) Harassment

23. The reason that the claimant's address was not included in the ET1 claim form was due to an error. The claimant's legal representative accepted that the form should have contained the claimant's address.

## **Conclusions**

### **The claim form**

24. The rules are very clear that a claimant must provide his or her own address. Failure to do so is a basis on which a claim form could (and should) be rejected at the outset of proceedings. This did not happen, and the respondent highlighted the defect in the ET3 response.
25. I was asked by the respondent to dismiss the claim under Rule 27 or strike it out under Rule 37. The claimant's legal representative objected, submitting that the basis of the application was a failure to comply with Rule 10. He said that to now rely on Rules 27 and 37 amounted to an amendment of the original application during the hearing and that he was not confident making submissions about Rules 27 and 37. The respondent submitted that although the basis of the application was the requirements of Rule 10, the power that the tribunal has to deal with a breach of the requirements is found in Rules 27 and 37.
26. I find that the application was clearly discussed at the preliminary hearing, and that the exercise of the tribunal's powers is a natural extension of an alleged breach of Rule 10. There is no fresh or amended application before me. Both parties have had plenty of time to prepare for the hearing today and to ensure they are fully prepared to discuss the relevant law. In any event, there was no application before me to adjourn the hearing. Both parties wished to proceed.
27. In my view, I do not have the power to dismiss the claim under Rule 27 in the circumstances of this case. The requirements of that rule are not reflected in the reality of what has happened. It is not a case in which the tribunal notified the parties that it considered it had no jurisdiction to deal with the claim.
28. The appropriate course of action is to consider whether the claim should be struck out under Rule 37 based on non-compliance with Rule 10.
29. There has been no attempt to rectify the accepted error in the claim form. I was asked by the claimant's representative to waive the requirement that the claimant's address. It was said that the failure to provide an address was merely a technicality and that there was no prejudice to the respondents.
30. The claimant could have applied to amend her ET1 well before the hearing today. No such application has ever been made. The claimant is not a litigant in person, she has been legally represented from the

outset. It is unclear why there has been no attempt to rectify the defect. In these circumstances, I do not consider it just to waive the requirement to provide the claimant's address in the ET1.

31. In reaching my decision, I have taken into account the overriding objective (Rule 2 of the Employment Tribunal Rules of Procedure 2013) and the requirement to deal with the case fairly and justly. In particular, I considered the need to deal with cases in ways which are proportionate to the complexity and importance of the issues and to avoid unnecessary formality in the proceedings. This is not a case where the claimant provided an incorrect address in error. No address for the claimant has ever been offered to the tribunal. Flexibility might, depending on the circumstances, allow a claimant to amend an incorrect address especially if this was done promptly. The fact that this case includes claims under the Equality Act 2010 is relevant to the complexity and importance of the issues. However, the failure to provide an address is a serious breach of the rules – as provision of an address is mandatory - and one that outweighs the nature of the claims or the fact that a fair trial of the issues may still be possible.

32. I do not find the failure to provide an address to be irrelevant, or immaterial, as was submitted to me on behalf of the claimant. If this were the case, Rule 10 of the Employment Tribunal Rules of Procedure would not be worded in the way that it is, namely that an ET1 shall be rejected if it does not contain the claimant's address. There has been no attempt to amend the claim form to date. A strikeout is proportionate in this case. The error was highlighted promptly by the respondent in the response form.

33. The claims in their entirety are therefore struck out under Rule 37(1)(c) of the Employment Tribunal Rules of Procedure 2013.

**Disability and continuity of service**

34. Having struck out the claims, it was not necessary for me to make findings about disability or continuity of service, and I did not do so.

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Employment Judge **Freshwater**

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Date 2 December 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

6 December 2024

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FOR EMPLOYMENT TRIBUNALS