



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs H Wilkinson

v

Essex Partnership University Trust
UNISON Branch

Heard at: Watford

On: 12 February 2019

Before: Employment Judge Hyams,
sitting alone

Appearances:

For the Claimant:

Mr Nicholas Bidnell-Edwards, of Counsel

For the Respondent:

Ms Melanie Tether, of Counsel

**For Essex Partnership University
NHS Foundation Trust:**

Mr Nathaniel Caiden, of Counsel

RESERVED JUDGMENT

- (1) The name of the party against whom the claim was made was the Essex Partnership University Foundation Trust.
- (2) That party was named in the early conciliation certificate, with the result that the claim form was not the subject of a defect of a sort to which rule 12(1)(f) of the Employment Tribunals Rules of Procedure 2013 applied.
- (3) The claim was intended to be made against the UNISON Branch known as "UNISON Essex Partnership University Trust Branch". It is in the circumstances appropriate to substitute that party as the respondent to the claim.
- (4) The claim against Essex Partnership University NHS Foundation Trust is accordingly dismissed.

REASONS

Introduction; the factual background to the hearing of 12 February 2019

- 1 The hearing of 12 February 2019 was originally intended to be a case management hearing. On 16 December 2018 a hearing notice was sent to the parties, informing them that the hearing was to be preceded by a preliminary hearing to determine the following issue:

“Whether the claimant has complied with ACAS Early Conciliation in request [that should probably have been “in respect”] of Unison Essex Partnership University Foundation Trust Branch and therefore entitled to present a claim to the Tribunal.”

- 2 The reason for that hearing was that the early conciliation certificate named as the respondent only “Essex Partnership University Foundation Trust”, and the claimant had been employed by the union known nationally as “UNISON” in the branch which it called its Essex Partnership University Trust Branch.
- 3 However, the claim form stated in box 2 “ESSEX PARTNERSHIP UNIVERSITY FOUNDATION TRUST”. The box below it for “Number or name” had it in “THURROCK HOSPITAL UNISON BRANCH OFFICE”. In box 5.2, by the words “Please say what job you do or did”, there was this text: “UNISON BRANCH CASE WORKER”.
- 4 The body known as Essex Partnership University NHS Foundation Trust had been treated as a party by the Tribunal staff, but the claim form was originally sent only to:

“Essex Partnership University
Foundation Trust, Thurrock Hospital
Unison Branch Office
Long Lane
Grays
Essex
RM16 2PX.”

- 5 There was therefore a problem for the claimant in that the claim was either (1) made against the wrong party (Essex Partnership University Foundation Trust), or (2) it was made against the right party (“UNISON Essex Partnership University Trust Branch”, to which, like Thompsons, the solicitors acting for it, I refer below as “UNISON EPUT Branch”)) and the wrong party (Essex Partnership University Foundation Trust) had been named in the early conciliation certificate. If the latter was the case then, unless I concluded (applying rule 12(2A) of the Employment Tribunals Rules of Procedure 2013) that “the claimant [had] made a minor error in relation to a name or address and it would not be in the interests of

justice to reject the claim”, the claim had to be rejected because of the provisions of rule 12 of the Employment Tribunals Rules of Procedure 2013.

- 6 If, on the other hand, the position was that the claim had been stated against the wrong party, then it was open to me, by reason of rule 34 of those rules, to substitute the right party.
- 7 In fact, UNISON EPUT Branch had responded to the claim, via Thompsons, primarily stating that the claim was not validly instituted but stating in the alternative in summary form its response to the claim.
- 8 At the hearing of 12 February 2019, I announced my conclusions, but I did not give my reasons for those conclusions formally (although the discussion which preceded the announcement of my conclusions probably enabled the parties to understand why I had come to them). I therefore do so in this document.

The parties’ submissions on how I should view the situation and what orders I should make

- 9 Mr Bidnell-Edwards submitted that either
 - 9.1 the claim was in fact made against UNISON EPUT Branch, and the naming of Essex Partnership University Foundation Trust rather than UNISON EPUT Branch was a minor error concerning the name of the respondent and rule 12(2A) should be applied by me, or
 - 9.2 the claim was (reading the claim form literally) made against Essex Partnership University Foundation Trust and I should substitute UNISON EPUT Branch for that Trust as the respondent.
- 10 Ms Tether’s position was that if the claim was properly to be regarded as having been made against UNISON EPUT Branch then the early conciliation certificate named the wrong party and that error was more than a minor error which, applying rule 12(2A) of the Employment Tribunals Rules of Procedure 2013, it would be in the interests of justice to excuse.
- 11 In connection with the substitution of the name of a party, under rule 34, Ms Tether helpfully referred me to *Drake International Systems Ltd v Blue Arrow Ltd* [2016] ICR 445, of which paragraphs 24-30 were particularly helpful. As for the question of what would be a minor error for the purposes of rule 12(1)(f) and the application of rule 12(2A), I was took into account, and referred the parties to, *Chard v Trowbridge Office Cleaning Services Ltd UKEAT/0254/16* (4 July 2017), unreported.

My conclusion on the preliminary issue

- 12 There were two ways in which I could read the ET1 claim form: either by

reference to the contents of box 2.1 as they stood, i.e. literally, or by reading in some words which were not in that box. However, when reading the early conciliation certificate, there was no room for any deviation from the words used in that certificate. In that regard, I found Langstaff P's discussion in paragraphs 21-23 of the judgment in *Drake* of some assistance. That discussion suggested that I should take a literal approach to the names in both documents, but in any event in the context of the application of rule 12 of the Employment Tribunals Rules of Procedure 2013 it appeared to me to be at least possible that that was the only permissible approach. In any event, given those factors, I concluded that the literal approach was the right one to take. Taking that approach, I had to conclude that the claim was made against the party which was named in the early conciliation certificate. On that basis, it was validly made and rule 12(1)(f) of the Employment Tribunals Rules of Procedure 2013 did not apply.

- 13 That left the question of whether I should substitute UNISON EPUT Branch for the body named as "Essex Partnership University Foundation Trust" in box 2.1. Applying the analysis of Langstaff P in *Drake*, I had no hesitation in deciding that UNISON EPUT Branch should indeed be substituted for that of Essex Partnership University Foundation Trust in box 2.1. This was because the proper respondent had been made aware of the claim from the start, and because it was in my view consistent with (and consistent only with) the overriding objective stated in rule 2 of the Employment Tribunals Rules of Procedure 2013 (noted and set out in paragraph 25 of the judgment of the Employment Appeal Tribunal in *Drake*) to do so.
- 14 The claim therefore was validly made, but it was made against the wrong party. The right party, namely "UNISON Essex Partnership University Trust Branch", should be substituted for that of the originally-named party.
- 15 If and to the extent that the words "Essex Partnership University Foundation Trust" needed to be read as a reference to "Essex Partnership University NHS Foundation Trust", then the claim against that is dismissed.

Employment Judge Hyams

Date: 14 February 2019

Sent to the parties on:01.03.19.....

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For the Tribunal Office