



**Case No. 2305831/2021**

# **EMPLOYMENT TRIBUNALS**

**Claimant:** Miss Ilona Borisovaite

**Respondent:** Innovator Capital Limited

**Heard at:** London South (By CVP)

**On:** 08 August 2022

**Before:** Employment Judge Self  
Ms H Bharadia  
Ms C Edwards

## **Appearances**

**For the Claimant:** In Person

**For the Respondent:** No Attendance

## **JUDGMENT**

1. Upon reconsidering the Judgment of EJ Reed dated 25 May 2022, that Judgment is revoked.
2. Upon reconsidering the decision made on 31 January 2022 to accept the Claim Form, that decision is revoked, and the Claim is dismissed as the tribunal has no jurisdiction to consider the same.

## **WRITTEN REASONS**

1. This matter came to the Tribunal following Judgment being issued by EJ Reed on 25 May 2022 and a full Tribunal has been convened to consider the appropriate remedy in relation to claims of sex discrimination, holiday pay and unlawful deduction of wages. That task has not been undertaken as there are some procedural matters that renders the Judgment in our view invalid.

2. The Claimant lodged her claim on 13 December 2021. On her form she indicated that ACAS did not have the power to conciliate on some or all of her claim and did not include an ACAS number. The Claim was processed and it was rightly considered that ACAS did have the power to conciliate on a claim for sex discrimination and unlawful deduction of wages and so the Claim was rejected on 17 January 2022 under Rule 12 (1) (d) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 (The Rules).
3. On 23 January 2022 the Claimant emailed the Tribunal and attached to that email an ACAS Certificate that ran from 12 December 2021 to 14 December 2021. She explained in her email that she had contacted ACAS before issuing the Claim and did not receive an ACAS number until after she had submitted the Claim and that she was unable to add the number after submission. She added that she had a legitimate claim and was owed money by the Respondent.
4. On 31 January 2022 a letter was sent to the Claimant accepting her Claim. It is unclear from the electronic file as to how that came to pass. Assuming the 23 January email was deemed to be an application for a reconsideration then such an application could be on the basis that the decision to reject was wrong or that the notified defect could be rectified.
5. The original decision was plainly right and so it can only be that Rule 13 (4) was brought into play i.e., that the defect could be rectified. In those circumstances the date of presentation would be deemed to be 31 January 2022. We will return to that decision shortly as the reality was the defect could not be rectified by an email of this sort .
6. No Response was entered by the Respondent and the matter was put before EJ Reed who entered Judgment on the wages claim and the holiday pay claim and the matter was listed for a full panel to quantify those claims and to consider the sex discrimination claims which had been pleaded on a very broad basis.
7. In **Pryce v Baxterstorey (2022) EAT 61** the Claimant acted in a similar manner. There was no ACAS EC in place at the date the Claim was lodged and she sought to rectify the same by emailing in the ACAS certificate after the Claim had been lodged asking for the number to be added to the Form.
8. When analysing the issue HHJ Shanks cited section 18A(8) of the Employment Tribunals Act 1996 which states that a person who is subject to the requirement to contact ACAS may not present a claim without an ACAS Certificate. The conclusion applied in Pryce is equally valid here in that when this Claimant presented her Claim on 13 December 2021

without a certificate there was no jurisdiction to consider it and what she sent to the tribunal was in effect a nullity.

9. At para 12 of Pryce, it is confirmed that sending an email of the type our Claimant did, cannot be described as a re-presentation of the Claim and there is no power to waive the formalities of Rule 8. At para 14 it states that:

***“the only way to rectify the error that was made here, namely starting proceedings before there was even a certificate in existence was to start them again after the certificate had been obtained using the standard claim form”.***

10. It follows that the email cannot possibly rectify the error. It gives us no pleasure to confirm to the Claimant that the quoted section above is precisely the step that she will need to do i.e., start a new claim on the same facts using her EC number. This is a claim that is in effect a nullity. It should never have been accepted on 31 January 2022 and it was an error for the Tribunal to do so.
11. I have reconsidered the Judgment of EJ Reed, and I have been appointed by REJ Freer to deal with the reconsideration of my own motion pursuant to Rule 72(3) of the Rules. I revoke that Judgment and further I dismiss all of the Claims because there is no jurisdiction for the Tribunal to consider the Claim in its current state and/or that I have reconsidered the decision to accept the Claim and revoke that decision.
12. The Claimant will need to resubmit her claim if she wishes to continue with this litigation, which will inevitably be out of time and consideration will no doubt be given as to whether she can satisfy the tests for extending time. The EAT have indicated at para. 17 of Pryce that whilst it depends on the facts of any given case it hoped that any such application would be treated sympathetically.

Employment Judge G SELF

Dated: 08 August 2022