



EMPLOYMENT TRIBUNALS

Claimant: Miss N Kennedy

Respondent: Atlantic Resource (Service) Ltd

Heard at: Cardiff **On:** 29 May 2020

Before: Employment Judge Moore

JUDGMENT

The claimant's claim is accepted.

REASONS

Background and findings of fact

1. On 15 January 2020, the claimant presented an ET1. She brings a claim of sex discrimination. The claimant is a litigant in person.
2. In Section 2 of the ET1, the claimant is required to complete the respondent's details. At 2.1 the ET1 requires the claimant to give the name of the employer or the person or organisation you are claiming against. In this box, the claimant wrote "Simon James".
3. In 2.2 the claimant is required to provide an address. In the box marked "Number or name" the claimant wrote "Atlantic Resource".
4. The claimant's early conciliation certificate identified the name of the prospective respondent as "Atlantic Resource".
5. The claim was served naming the respondent as "Simon James".
6. In the respondent's response they asserted that the tribunal does not have jurisdiction to hear the complaint as it should have rejected the claim under Rule 10 (1) (c) (i) and Rule 12 (1) (f) of the Employment Tribunal Rules of Procedure 2013.
7. On 25 March 2020 at a preliminary hearing, EJ Beard directed that an employment

judge would determine this issue upon receipt of written submissions. There was no objection from the parties.

8. The claimant submitted, which I accept as a finding of fact, that she had no experience of filling out these types of forms. Where the claimant described her claim to be against Simon James and at the same time acknowledging she worked for Atlantic Resources, it was clear to me that the claimant did not understand the difference between who legally her claim was against and who she perceived to be the perpetrator of the alleged discriminatory acts.

9. Submissions

10. The respondent's submissions were received on 27 April 2020. The respondent asserted that the claimant clearly understood the difference between the respondent and the prospective respondent because she had correctly identified her employer to ACAS and further that she had deliberately made her claim out against Simon James. Further that is apparent from the particulars of claim she intended to bring her claims against Simon James.

11. The claimant replied in a short email dated 11 May 2020. She explained she had made a simple mistake, was suffering from severe anxiety and depressions and was unable to afford legal representation.

12. I reviewed the respondent's submissions and supporting case law as well as the claimant's submissions in chambers on 29 May 2020 and reached my decision without a further hearing.

13. The Law

14. The Employment Tribunal Rules of Procedure 2013 set out circumstances in which the Tribunal must reject a claim. Under Rule 10 (1) (c) (i) a claim shall be rejected if it does not contain an early conciliation number. Under Rule 12 (1) (f) the claim shall be rejected if the name of the respondent on the claim form is not the same as the name of the prospective respondent on the early conciliation certificate. Under Rule 12 (2A) the Tribunal shall reject the claim unless the Judge considers that the claimant 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.

15. I considered the guidance from the Employment Appeal Tribunal in the cases of **Giny v SNA Transport Limited (UKEAT/0317/16)**, **Mist v Derby Community Health Services NHS Trust UKEAT/0170/15** and **Chard v Trowbridge Office Cleaning Services Ltd UKEAT/0254/16**.

16. Conclusions

17. I have determined that the claimant both made a minor error in relation to the name and address of the respondent and it would not be in the interests of justice to reject the claim for the following reasons.

18. Minor error

19. The claimant is a litigant in person. The Tribunal sees many claims lodged where litigants in person describe a person in box 2.1 of the ET1 then underneath in 2.2 they write the name of the company for whom they worked. Litigants in person are not always able to articulate who their employer was. In this case, the claimant was not confused about the identity of her employer. She was aware it was Atlantic Resource. I do not consider that her explanation that her complaint was against

Simon James means the claim should be rejected as the claimant as a litigant in person, did not understand the issue regarding the legal identity of her employer. The rules require that the name of the respondent on the claim form be the same as the prospective respondent. They do not say that the name of the employer must be contained in box 2.1 only. The claimant did name "Atlantic Resources" in box 2.2. The company was named, the address was the same and Mr James is the managing director of the respondent. For these reasons I find that the naming of the respondent in box 2.2 instead of box 2.1 was a minor error.

20. Interests of Justice

21. I also consider that it would not be in the interest of justice to reject the claim. I have had regard to the overriding objective. The claimant is a litigant in person and to prevent her from bringing her claim on the basis she entered the name of the respondent in box 2.2 instead of 2.1 would not, in my judgment be in the interests of justice. The claim was issued in time. The only prejudice to the respondent would be to deny them a defence based on a jurisdictional point where under 12 (2A) the Tribunal has specifically been afforded exercise of discretion.

Employment Judge Moore

Date: 29 May 2020

JUDGMENT SENT TO THE PARTIES ON 11 June 2020

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FOR THE TRIBUNAL OFFICE

Note

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