



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mrs Siobhan Bastin

AND

Respondent

TBB Leisure Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth

ON

11 January 2023

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: Mr D Brown of Counsel

JUDGMENT

The judgment of the tribunal is that:

- 1 The claimant's application for reconsideration of the rejection of her first claim under reference 1402700/2021 is granted, and the name of the respondent is amended to TBB Leisure Limited; and**
- 2 That claim is reinstated and it was presented within time; and**
- 3 The second claim under reference 1400112/2022 is now an unnecessary duplication of that first claim and is hereby dismissed.**

REASONS

1. The claimant's claim against the respondent claims automatic unfair dismissal on the grounds of having made protected public interest disclosures. This is the judgment following a Preliminary Hearing to determine whether or not the claimant's claim was presented in time.
2. I have heard from the claimant who gave evidence. I have heard from Mr Brown on behalf of the respondent who questioned the claimant and made submissions. I find the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to any factual and legal submissions made by and on behalf of the respective parties.
3. The Facts

4. The respondent company TBB Leisure Limited manages bars and leisure facilities. The claimant Ms Siobhan Bastin was employed as a Front of House Supervisor at the Plymstock Inn in Plymouth from 1 January 2020 until her dismissal on one month's notice which took effect on 17 June 2021. The claimant asserts that the reason for her dismissal was because she had made protected public interest disclosures relating to the breach of various legal obligations by the respondent, including health and safety and data protection. The respondent asserts that the claimant was dismissed for misconduct arising from a disagreement with the pub chef relating to an injured pigeon which the chef killed, and for being rude to a fellow member of staff.
5. The claimant first commenced the Early Conciliation process with ACAS on 26 May 2021 ("Day A"). ACAS issued the Early Conciliation Certificate on 6 July 2021 ("Day B") some 41 days later. The prospective respondent was correctly named as TBB Leisure Limited (because this was the claimant's employer). The claimant first presented these proceedings on 29 July 2021 and it was given the Tribunal reference number 1402700/2021 ("the First Claim"). This First Claim was clearly presented within time. However, the claim was rejected because in that application the claimant had named as the respondent Amanda Coulter (who is the owner of the respondent company) rather than the respondent company itself (TBB Leisure Ltd). The name of the respondent was different from that on the originating application.
6. The following events should be seen against the background of the Covid 19 pandemic and difficulties which the Tribunal service was facing with regard to administrative support.
7. The claimant submitted this First Claim on 29 July 2021. She was concerned that she had heard nothing and on 9 September 2021 telephoned the Tribunal office for an update. The claim was then rejected by letter dated 20 September 2021. The rejection letter included the standard information from the tribunal office headed: "Employment Tribunals: Claim Rejection Early Conciliation: Your Questions Answered". Paragraph 13 made it clear that the claimant could seek a reconsideration of the rejection letter within 14 days including the advice: "If you want to change the name of the claimant or respondent or the early conciliation number on the claim form, say so."
8. The claimant responded immediately by return email asking for the respondent's name to be changed from Amanda Coulter to TBB Leisure Ltd "as this will then match the early conciliation certificate and it is the correct name to use". Unfortunately, that application for reconsideration, which was received within time, was not referred to an Employment Judge and was not acted upon.
9. On 1 October 2021 the claimant telephoned the Tribunal office for an update and says that she was told that her correspondence had been received and that the name change had been affected and that no further action was required, but that correspondence was generally taking three months to be dealt with because of the Covid pandemic.
10. On 13 January 2022 the claimant had still not heard anything further and she telephoned the Tribunal office. As a result of this conversation, she submitted a second claim on 13 January 2022 which was given the reference number 1400112/2022 ("the Second Claim"). The claimant originally recalled that the tribunal office and said that it would merely amend her claim, but this cannot be right because the Second Claim is slightly different in its grounds of application than the First Claim. The claimant eventually received a letter from the tribunal office dated 16 June 2022 acknowledging the Second Claim as having been accepted. This was then served on the respondent, which was the first indication that it had received that there was a claim registered against it. The respondent's notice of appearance unsurprisingly asserted that this Second Claim had been presented out of time, and this preliminary hearing was listed to determine that issue.
11. Decision:
12. This is obviously an unusual set of circumstances given the administrative oversight explained above. The claimant acted immediately in seeking reconsideration of the decision to reject the First Claim well within the original time limit for issuing proceedings for her unfair dismissal claim. She had valid grounds for that application for reconsideration which was merely to replace the name of the respondent to that of her employer TBB Leisure Limited which was the name of respondent on the Early Conciliation Certificate. I

- have no doubt that that application would have been granted had it been referred to an Employment Judge at that time. Unfortunately, it was never dealt with and that First Claim was left in abeyance, and no further action was taken by the Tribunal office. Some months after these events the claimant was advised by the Tribunal office to submit a further claim, which she did, and this Second Claim was presented out of time. Given that the claimant's application for reconsideration under the First Claim has not yet been considered, I deal that application now.
13. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
 14. In my judgment is clearly within the interests of justice to allow the claimant's application for reconsideration. She mistakenly named the respondent as Amanda Coulter, the owner of the respondent company, which did not match the Early Conciliation Certificate, but applied immediately to remedy this defect once she had been notified that her claim had been rejected. I allow that application and the name of the respondent under the First Claim is amended to TBB Leisure Limited. That First Claim is now a valid claim.
 15. It follows that the Second Claim under reference 140 0112/2022 is unnecessary duplication and for that reason it is hereby dismissed.
 16. I have made case management orders for the progression of the First Claim which are included in a Case Management Order of today's date.

Employment Judge N J Roper
Date: 11 January 2023

Judgment sent to Parties: 27 January 2023

FOR THE TRIBUNAL OFFICE