

Confirmation of Acas early conciliation in the context of multiple claim forms

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In order to reduce the burden on the judicial system, claimants must first attempt to settle potential claims through the Acas early conciliation procedure. Once the procedure is completed, parties are given an early conciliation certificate (**EC**) (which includes an EC reference number). The claim form (ET1) must then refer to the EC to avoid the Employment Tribunal Rules of Procedure (**Rules**) being breached, and the claim struck out.

In 2015/2016, 865 employees of supermarkets brought equal pay claims. Prior to bringing the claim, Acas procedures were conducted. At the time, Acas had multiple methods of adding reference numbers to ECs. For instance, on an EC, Acas would state:

1. an individual EC number (**R number**);
2. a multiple claim EC number (**M number**) and a claimant's R number – but would omit the R numbers of the other prospective claimants; or
3. a M number, a R number for a claimant, and the R numbers for each of the other prospective claimants.

In 2020, a supermarket respondent argued that 700 claims should have been dismissed in their early stages, alleging that the multiple claim forms did not correctly satisfy the Rules relating to EC.

The respondent took issue with the following references to ECs on the multiple claim forms:

1. the only number referred to on the multiple claim form was the M number;
2. the only number referred to on the multiple claim form was the lead claimant's R number (which derived from an EC that also detailed a M number and the R numbers for the other prospective claimants);
3. the only number referred to on the multiple claim form was the lead claimant's R number (which derived from an EC that also detailed a M number and only the names of the other prospective claimants); and
4. only the lead claimant's R number was given in the claim form, which derived from an EC that did not have all the other prospective claimants' names on it.

The respondent argued that the claims of the omitted claimants should have been struck out.

The matter was heard by the Employment Tribunal, the Employment Appeal Tribunal and the Court of Appeal. Ultimately, it was decided that each of the above four categories of EC references were sufficient to confirm that all the prospective claimants had complied with the EC requirements. There was no mandatory requirement to set out the EC number for each prospective claimant. Nonetheless, it was advised that it would have been good practice to do so.

Following this outcome, respondents of multiple claim forms should note that:

- it is not mandatory for the multiple claim form to refer to each claimant's EC number, and it is suggested that a simple reference to *an* EC number on a multiple claim form is acceptable provided that the EC itself details a claimant's name; and
- if the multiple claim form has not detailed each claimant's EC number, and this had not been flagged or rejected in the early stages by the tribunal or judge, then the respondent is not entitled to argue at a later stage that the claims of the unnumbered/unnamed claimants should be dismissed.

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