



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss K Mills

**Respondents:** 1. The B1 UK Ltd  
2. Mrs Jenny Gilchrist  
3. Mr Steve Gilchrist

**HELD AT:** Carlisle

**ON:** 17 October 2017

**BEFORE:** Employment Judge Franey  
Mrs C Bowman  
Mr C Clissold

## REPRESENTATION:

**Claimant:** In person  
**1<sup>st</sup> Respondent:** Did not attend  
**2<sup>nd</sup> Respondent:** In person  
**3<sup>rd</sup> Respondent:** In person

# JUDGMENT

The unanimous judgment of the Tribunal is that the application made by the second and third respondents for an extension of time for presenting their response forms is granted. Time for presentation of their response forms is extended to 25 September 2017 and those response forms are accepted.

# REASONS

## Introduction

1. The claim form presented on 20 March 2017 brought complaints of unfair dismissal, disability and sex discrimination, and sought payments in respect of notice pay and holiday pay. The claim was brought against the company which had employed the claimant (the first respondent). The first respondent filed a response form on 19 April 2017 defending the claims. Box 2.2 on the response form gave the first respondent's contact details as Mr and Mrs Gilchrist. They were not at that stage named as respondents.

2. The company ceased trading in June 2017. No-one appeared for it at a preliminary hearing before Employment Judge Holmes on 28 June 2017. The possibility of the claimant applying to add Mr and Mrs Gilchrist as individual respondents in her discrimination complaints was discussed, and the claimant subsequently made that application. It was granted by Employment Judge Holmes on 14 July 2017. By a letter of 27 July 2017 the proceedings were served on Mr and Mrs Gilchrist individually with a response form required by 24 August 2017.

3. No response form was received by that date. The three day final hearing was converted to a one day hearing on 17 October 2017. The complaints against Mr and Mrs Gilchrist personally appeared to be undefended.

### **Application for Extension of Time**

4. On 25 September 2017, however, through their solicitor Mr and Mrs Gilchrist applied for an extension of time for lodging response forms, with that application accompanied by proposed response forms. The letter explained why the forms had not been lodged within the time specified.

5. By a letter of 2 October 2017 the claimant objected to the application for an extension, and Employment Judge Porter ordered that the application be considered at the start of the hearing today.

### **Rules of Procedure 2013**

6. The general power to extend a time limit appears in rule 5. The procedure by which an extension of time for a response form is to be sought appears in rule 20. In accordance with the procedure in rule 20, the second and third respondents set out the reasons why an extension was sought and their application was accompanied by a draft of the responses which they wished to present. Similarly the claimant objected within seven days of receipt of the application. That explained why it had to be determined at a hearing.

7. In common with all powers under the rules, the power to extend time must be exercised in accordance with the overriding objective (rule 2) of dealing with cases fairly and justly. That includes, so far as practicable, avoiding unnecessary formality and seeking flexibility in the proceedings.

### **Relevant Facts**

8. The claimant did not dispute the factual account given by Mr and Mrs Gilchrist and the Tribunal concluded that the failure to file the response form had occurred as follows.

9. When the Tribunal letters of 27 July 2017 arrived requiring a response by 24 August 2017, Mr and Mrs Gilchrist were on holiday. They saw the letters on their return on 12 August 2017.

10. They had not previously been aware that they might be personally liable in these proceedings and decided to take legal advice. Mr Gilchrist contacted their lawyer, Mr Robertson, on Monday 14 August 2017 and they met him on the first available opportunity, on Friday 18 August 2017. Mrs Gilchrist explained that they

had with them the letters from the Tribunal but it was agreed with Mr Robertson that he would contact the Tribunal and apply for an extension. He asked them to take all their paperwork away and send copies to him. They understood he was about to go on annual leave.

11. Mr Robertson did email the Tribunal on 23 August 2017, but his email did not seek an extension of time for the response forms. Instead it said that he had seen a copy of the Case Management Order of Employment Judge Holmes, but said he had not yet received copies of the notification from the Tribunal of the requirement for response forms to be filed. He indicated that his clients wished to defend the claims and that a formal response would be submitted as soon as he had all the relevant information.

12. By a letter of 31 August 2017 the Tribunal sent Mr Robertson a copy of the claim form and the response filed by the first respondent.

13. Mr and Mrs Gilchrist thought that Mr Robertson was acting to protect their interests. They believed he was on holiday in early September. The full set of copy documents was supplied to him on 6 September. In fact he was on annual leave from 4 September 2017 and did not return to the office until Monday 18 September. Upon his return he saw the paperwork and made the application of 25 September 2017.

### **Submissions**

14. Mr and Mrs Gilchrist submitted that the failure to lodge a response form in time in each case was simply because of communication issues between themselves and Mr Robertson, and that it would be disproportionate for them to be deprived of the opportunity of defending the allegations of discrimination made against them personally by such a default.

15. In contrast the claimant submitted that time should not be extended. She had been able to comply with all the Tribunal deadlines even though she was representing herself. She suggested that Mr and Mrs Gilchrist had only taken the proceedings seriously once they were personally involved and there was no reason why the response forms could not have been lodged within time. If it was the fault of their lawyer that was a matter between them and him.

### **Conclusions**

16. After hearing submissions the Tribunal unanimously decided to extend time. We were very concerned at the failure to file the response forms within the time required when it was clear that Mr and Mrs Gilchrist had received the relevant letters well before that time limit expired.

17. However, we accepted their account that they had left the matter in the hands of their legal adviser, Mr Robertson. It was unclear why Mr Robertson had not appreciated on 18 August that response forms had to be filed by 24 August. Had he done so he could have filed a brief holding response to protect the position. Instead he did not seek any extension of time in his email of 23 August and nor did he make any arrangements for the matter to be handled during his absence on leave. We were satisfied that this represented unreasonable conduct by either Mr and Mrs

Gilchrist or their lawyer. However, the Tribunal considered that depriving Mr and Mrs Gilchrist of the opportunity to defend the complaints on their merits would be disproportionate. It was still possible to have a fair hearing of the claimant's allegations, particularly when any unnecessary work caused to the claimant could in principle be the subject of a preparation time order.

18. We therefore unanimously extended time for the response forms from the second and third respondents.

### **Preparation Time**

19. The claimant indicated she wished to apply for a preparation time order. That represents time wasted as a consequence of any unreasonable conduct by the second and third respondents or their representative. It is remunerated by the rate fixed by legislation of £37 per annum in the year beginning 1 April 2017.

20. The claimant was unable to give a figure for the number of hours wasted by the failure to file a response form within time. It appears likely that it will include time spent in responding to the application for an extension (i.e. in writing her letter of 2 October 2017), and in time spent preparing for this hearing which will have to be spent once again prior to the final hearing.

21. It was agreed that the claimant would provide the figure for the number of hours sought in accordance with the timetable set out in the Case Management Order promulgated at the same time as this judgment.

22. At the conclusion of the final hearing in this case the claimant will be able to make her application and the respondents will have an opportunity to respond to it before the Tribunal decides whether to make an order.

23. If the respondents wish their ability to pay to be taken into account they should each provide to the claimant not less than seven days before the final hearing a witness statement setting out their financial position accompanied by documentary evidence of income, outgoings, assets and liabilities. Five copies of that material must be brought to the final hearing. If they do not take this step the Tribunal will not have regard to their ability to pay.

Employment Judge Franey  
20 October 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
31<sup>st</sup> October 2017

FOR THE TRIBUNAL OFFICE