EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant Mr A Dogan

AND

Respondent Sofra International ltd

HELD AT: London Central on 14/2/2018
Employment Judge: Mr J S Burns

Appearances
For Claimant: Mr N Williams (Counsel)
For Respondent: Mr D Smith (Consultant)

ORDER/JUDGMENT

1. The Respondent's application for an extension of time for service of its Response is refused.
2. Judgment is entered for the Claimant on his claims.
3. The damages/compensation payable by the Respondent shall be assessed at a remedy hearing. No arguments based on any claimed contributory fault on the part of the Claimant or Polkey-type arguments shall be admissible at the remedy hearing. At the remedy hearing the Claimant shall be put to proof of the damages and compensation he seeks and show what steps he has taken in attempts to mitigate. The Respondent may participate in relation to these limited issues only and as directed by the judge.
4. The Respondent shall pay the Claimant's costs of the hearing today and relating to the late filing of the response, summarily assessed at £1669.80 including vat, which shall be paid to the Claimant's solicitors by 21/2/2018.
5. The Claimant shall serve on the Respondent's representatives by 28/2/2018 an amended Schedule of Loss, a signed remedy-only witness statement and a paginated bundle of copies of all remedy/mitigation documents within his possession or power.
6. If so advised the Respondent may serve a counter-schedule by 7/3/2018.
7. The remedy hearing shall take place at 10am on 14/3/2018 allowing three hours. The parties are to bring copies of the above documents for the tribunal judge.

REASONS FOR NOT ALLOWING THE EXTENSION

1. I heard evidence from Ms H V Guven, the Respondent's accountant, bookkeeper and person primarily responsible for dealing with the Respondent's incoming business correspondence. No witness statement had been prepared for her and she gave rambling and somewhat conflicting evidence.

2. I find that the claim form was sent by the Tribunal to the Respondent on 1st November 2017 and received by it in the ordinary course of post by about 3 November 2017. Ms Guven was supposed to be supported by an assistant but there was no assistant employed at the time. Mr Ozer the owner of the Respondent did not read incoming post. After her return from an extended holiday during which period no-one had been dealing with any incoming post, on 8/11/2017 Ms Guven opened and read the Tribunal letter, and she understood it. It informed her that if the Respondent wished to defend the claim it needed to file a Response by 29/11/2017, and that the case would be heard on 13/2/2018. However Ms Guven did nothing with the letter or claim form. She claims this was because she thought that someone else such as Peninsular would do so. However the letter was not addressed to Peninsular and Ms Guven had no reasonable grounds for making any such assumption. She did not check with Peninsular. Furthermore to her knowledge no information had been passed to Peninsular in order that it could draft a response. Ms Guven later received the tribunal's chasing letter dated 4/12/2017, which pointed out that no response had been received, and which requested an explanation and information by 11/12/2017. After a further delay, on 8/12/2017 Ms Guven mentioned the matter to Mr Ozer, who then asked her to copy the claim form over to Peninsular, which she then did. There was a further unexplained delay before Peninsular finally sent in a draft response and application for an extension on 15/12/2017.

3. I have had regard to the principles in the Kwik Save case.

4. I find that the cause of the default was gross incompetence and reckless disregard of the tribunal's correspondence for which the Respondent is wholly at fault by leaving Ms Guven to deal with incoming business correspondence which she was unable or unwilling to do at a basis level of competence, and/or by not providing her with an assistant. The Respondent is a substantial business which could and should deal with business and employment matters in a reasonably businesslike manner. I find the reason put forward for the default to be woefully deficient as an acceptable excuse.

5. Without reaching any definitive determination, which I cannot do, I take the view that the proposed response would have little merit as a defence to the main claim for unfair dismissal, in any event. There is no time point that can be taken against the claim. The main issue between the parties is whether the Claimant resigned or was dismissed. The Claimant says he was dismissed summarily. That version is strongly

supported by a letter/email dated 20/6/2017 that he wrote to Mr Ozer on the same day. No rebuttal of this version was provided at the time and even now there is no witness statement or other scrap of evidence from the branch manager Murat Baylan to support any suggestion that the Claimant resigned.

6. The application for an extension has not been conducted in a reasonable way. It was served on the Claimant only on 8/2/2018 and even then was lacking essential information. No witness statement was produced in support of the application, which resulted in the facts relied on having to be extracted with some difficulty from Ms Guven's unsatisfactory oral evidence given today.

7. The prejudice to the Claimant cannot really be addressed simply by making a costs award as the case has been delayed and the directions not complied with, and the trial date lost.

8. Furthermore unacceptable and unjustified failure to comply with tribunal directions and time-limits causes a waste of tribunal and other resources and delays to other Tribunal users.

9. The Respondent was given a full opportunity to deal with the merits on an equal footing, and has only itself to blame for the loss of that opportunity. In this case the overriding objective is best served by granting default judgment to the Claimant.

REASONS FOR MAKING A COSTS AWARD

10. The above reasons are repeated. I find that the Respondent has acted disruptively and unreasonably in the way it has sought to respond to the claim and in the way it has made the application for an extension. It is appropriate that the Respondent should pay the costs incurred by the Claimant as a result. Mr Smith opposed the making of the order but did not seek to challenge the quantum of the Claimant's costs schedule, on the basis of which I have assessed the costs payable.

Employment Judge Burns on 14 February 2018