



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs G Nolan

**Respondent:** Secretary of State for Justice

**Heard at:** London South Employment Tribunal      **On:** 21 June 2023

**Before:** Judge M Aspinall (sitting alone as an Employment Judge)

**On Papers**

## JUDGMENT

### The Employment Tribunal Rules of Procedure 2013 - Rule 21

1. The Respondent's applications to extend time to file their amended response to 5 and then 31 May 2023 are granted.
2. The Respondent's application to extend time to file their amended response to 14 June 2023 is refused.
3. The Claims for discrimination based on sex, CP, gender reassignment and for a flexible working detriment succeed, on liability, for the reasons which follow.
4. A remedy hearing will be required. Case Management Orders will be issued separately.
5. Pursuant to Rule 21(3) the Respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.
6. The full merits hearing, currently listed at Ashford, on **3-5 April 2024** is vacated.

## REASONS

7. On 8 March 2023, following a preliminary hearing, Case Management Orders were issued by EJ Poynton. In those orders, amongst other things, the Respondent was ordered to send their amended response to the claims by 31 March 2023. Several applications followed:
  - a. On 29 March 2023, the Respondent applied to the Tribunal for an

extension of time in which to file that amended response: to 5 May 2023. By an email of 20 April 2023, those representing the Claimant confirmed that there was no objection to that extension of time.

- b. By a further email on 5 May 2023, the Respondent applied for a further extension of time to file their amended response: to 31 May 2023. The Claimant, by email of the same date, confirmed that there was no objection.
  - c. By a further email on 31 May 2023, after business hours, the Respondent again applied for an extension of time: to 14 June 2023. The Claimant does not appear to have responded to this application.
8. The Respondent then sent their amended response to the Claimant and the Tribunal by email on 5 June 2023.
  9. In all, the Respondent took 66 additional days, past 31 March 2023, to file the amended response ordered by EJ Poynton on 8 March 2023. They, in fact, took a total of 89 days from 8 March 2023 when the order was set out at the hearing.
  10. In each of the applications to extend time, the Respondent gave assurances that they would file their response and provide an answer on the question of judicial mediation, by the new date proposed. On three separate occasions, the Respondent has failed to meet the deadlines set.
  11. In the circumstances set out in the first extension application, and given the concession to it by the Claimant, I would grant the application for the amended response to be filed by 5 May 2023. Similarly, I would grant the second application extending time to 31 May 2023, to which the Claimant - again - did not object.
  12. Turning to the third and last application. This was made after business hours on the day when the amended response was due (according to the previous application) and even allowing that it arrived before midnight, it was unlikely that the Tribunal or the Claimant would see it before time ran out. It was not an application made in good time. It was also the third such application made by the Respondent which is a large department of state with the resources of His Majesty's Government and the Government Legal Service available to it.
  13. In these circumstances I refuse the third application and do not extend time beyond 31 May 2023.
  14. The amended response, belatedly received on 5 June 2023, was out of time. The response is therefore rejected pursuant to Rule 18(1) of The Employment Tribunals Rules of Procedure 2013 (as amended) because it has been presented outside the time limit specified in orders given by the Tribunal.

## **RULE 21**

15. Rule 21(1) states that *"Where on the expiry of the time limit in rule 16 no*

*response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply”.*

16. The time limit under rule 16 was, here, extended or reset by the order of EJ Poynton on 8 March 2023 and by my decision herein to 31 May 2023 (pursuant to applications made under Rule 20 by the Respondent).
17. Rule 21(2) states that *"An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone..."*.
18. I am satisfied that the Claimant succeeds on liability, and issue a judgment, under Rule 21, on that basis. As the response has been rejected, no response has been filed.
19. I do not consider it possible, with the information available to me, to determine the question of remedy. I find that a remedy hearing is necessary to do so.
20. Rule 21(3) states that *"The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge"*. That shall be the case here.

---

Employment Judge Aspinall  
Date: 21 June 2023

**Note**

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.