



# EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr R Smith

v

Wesco Aircraft EMEA Limited

**Before: Employment Judge JM Wade** (in chambers)

## JUDGMENT

- 1 The respondent's application(s) made on 21 August 2024 (and/or subsequently) for an extension of time to present its response is refused for the reasons set out below.
- 2 The respondent's application of 4 September 2024 for reconsideration of a Rule 21 Judgment sent to the parties on 21 August 2024 is also refused, for the reasons set out below.

## REASONS

1. This case has had an unfortunate procedural history summarised by Employment Judge Knowles, which I repeat below, correcting any obvious errors or additional information from my review of the file, which appear in bold and underlined:
  1. *"On 10 May 2024 the Claimant presented a claim form to the Tribunal claiming unfair dismissal, a redundancy payment and breach of contract (notice pay). His claim form sets out that he was employed by the Respondent as a Quality Engineer / On Site Representative and was employed from 12 December 2000 to 31 January 2024.*
  2. *He attached an ACAS certificate confirming that early conciliation began on 11 April 2024 and ended on 26 April 2024.*
  3. *A notice of claim and notice of hearing (for today) was sent to the parties on 2 July 2024. The documents were sent by email to the Claimant and by post to the Respondent.*

4. *The documents are sent to the Respondent's registered office address and are correctly addressed.*
5. *The notice of claim set out that if the Respondent wishes to respond to the claim it must do so by 30 July 2024 and explains what may happen if it does not.*
6. *The Claimant made written enquiries to the Tribunal on 6 and 9 August 2024 as to whether or not the Respondent had submitted a response. No copies were sent to the Respondent as nobody was on record.*
7. *The Claimant sent a schedule of loss to the Tribunal on 12 August 2024, copied to the Respondent at their registered office address.*
8. *On 15 August 2024 the [Respondent]**Claimant** emailed the Tribunal requesting a Rule 21 Judgment in the absence of any response received from the Respondent.*
9. *On 16 August 2024 Employment Judge Wade signed a Rule 21 Judgment upholding the Claimant's claims of unfair dismissal, breach of contract and for a redundancy payment. Damages for breach of contract were awarded in the sum of £5,820.12 and compensation for unfair dismissal, consisting only of a basic award as claimed, in the sum of £19,244.10. Remedy for the redundancy payment was subsumed by the basic award so no further amount was awarded for that.*
10. *The Rule 21 Judgment was promulgated and sent to the parties on 21 August 2024. The Judgment was sent to the Respondent by post to its registered office address and by email to the Claimant.*
11. *A matter of a couple of hours before the Rule 21 Judgment was emailed and posted to the parties, on 21 August 2024, an email had arrived at the Tribunal (but presumably was not immediately linked to either file) from the Respondent which read as follows:*

*"I am writing to you with regards to the above case number 1803973/2024. The notification of this claim was received by the relevant department on 20<sup>th</sup> August. I appreciate the official deadline has passed but would like to request an extension for us to be able to formally respond. I look forward to hearing from you".*
12. *There were no attachments to the email and the Claimant was not copied into the correspondence.*
13. *On 30 August 2024 the Respondent submitted a response form online. They disputed the Claimant's claims and attached to the response form were:*

- 13.1 A “top level summary” of their response, 3 pages. These appear as narrative grounds of resistance but include in their opening paragraphs an application to strike out the claim or for a deposit order.
- 13.2 6 exhibits. These are copies of documents and statements **Note: There was no copy of Exhibit 1, described as the claimant’s “Notice of Resignation”, which has now been supplied by the claimant’s solicitor after a request to both parties was made on 29 November 2024. It is also described in paragraph 6 of the claimant’s particulars of claim, and the respondent submits in its draft resistance that the claimant’s omitting of the full context of this email is misleading. Context said to be missing by the respondent includes: “An employee does not have the right to determine the length of a secondment nor unilaterally end a secondment whilst there is still a need for a secondee, as was the case here”**
- 13.3 **The claimant’s secondment contract says in terms:**  
**“You will remain employed by [the respondent] (“the Company”) during the Secondment and your current terms of employment (namely those applying before the commencement of the Secondment) shall remain unchanged, except as set out in this letter. ....**  
**The secondment shall commence on 25<sup>th</sup> May 2017 and shall continue for an unbroken period of 2 years unless terminated earlier by any of the following:**  
**On 2 months’ written notice from either you or the company; or**  
**On the termination of your employment in accordance with the terms of your contract of employment.....**
14. The 30 August 2024 online submission by the Respondent provides no further information about the reasons for the late delivery of the response form.
15. On 4 September 2024 the Respondent writes to the Tribunal having, it says, received the Rule 21 Judgment on 30 August 2024. They point out to the Tribunal that they have been unable to make an online submission of their application for reconsideration, and show screenshots which appear to show that the case cannot be found. The screenshots appear to show that attempts are being made to find the case and file documents at the Tribunal and at the Employment Appeal Tribunal.
16. The Respondent’s email to the Tribunal dated 4 September 2024, document 16 on the Tribunal paper file, appears to have been sent three times on the same day, so it difficult to determine when the attachments were sent, but they were all sent to the Tribunal on that day.
17. The Respondent in this email clearly makes representations about the application for an extension of time to file a response and expressly states that it is an application for reconsideration of the Rule 21 Judgment.
18. Some points are made by the Respondent in the email dated 4 September 2024 about the late submission of the response, in particular:

- 18.1 *"We received two letters from you on 21 August 2024; the Claim form from the Claimant and a subsequent notice stating that we had not responded. The Claimant's solicitor did not serve a copy of the Claim form upon us at all and you did not send the Claim form by recorded delivery, nor was it addressed to the legal department or HR department nor indeed to any team or individual. Please see attached a picture of the envelope attached from you".*
- 18.2 *The email sets out that the Respondent acted quickly to apply for an extension of time on 21 August 2024 then file a response on 30 August 2024.*
- 18.3 *The email expresses disappointment with the Rule 21 Judgment, suggesting that the Judge failed to deal with errors or inconsistencies in the claim form.*
- 18.4 *The email concludes "Given the above procedural errors, and our continuing inability to be able to contest the judgment through no fault of our own, we ask that someone respond to us immediately so that we can submit our application to have the judgment reconsidered. The reasons that the judgement [sic] should be reconsidered are set out in our response as attached and previously submitted to you".*
19. *There are several attachments to this email, including outlook emails with their own attachments, plus two zip files. None of these have been printed to the Tribunal paper file.*
20. *None of the correspondence from any of the parties is contained on the electronic Tribunal file.*
21. *The attachments to the 4 September 2024 email to the Tribunal (not copied by email to the Claimant) are as follows:*
  - 21.1 *"Letter with claim form received from ET"; this is a photograph of an envelope which appears to be correctly addressed to the Respondent's registered office.*
  - 21.2 *"Letter with claim form received from ET 21 August"; this is another photograph of an envelope which appears correctly addressed to the Respondent's registered office.*
  - 21.3 *"Your response to Employment Tribunal claim online form receipt". This is a copy of the email confirming receipt of the ET3 form from the Tribunal's systems dated 30 August 2024.*
  - 21.4 *"Case Number 1803973/2024"; this is a copy of the email dated 21 August 2024 from the Respondent to the Tribunal requesting an extension of time to file a response.*

21.5 *“21st August”; this is a copy of the Tribunal’s letter and the Rule 21 Judgement.*

21.6 *Within the zip file “Confidential – response for Employment Tribunal”:*

21.6.1 *“Confidential – Response for Employment Tribunal”; at first glance this may appear simply to be a copy of the grounds of resistance submitted on 30 August 2024 but on closer inspection the heading “The Reconsideration Application” has been added at the top of the document.*

21.6.2 *“T444-0923 Response RS”; this appears to be a partially completed notice of appeal form for appealing to the Employment Appeal Tribunal.*

21.7 *Within the zip file “Case 18039732024”:*

21.7.1 *“21st August”; a second copy of the document referred to at 32.5 above.*

21.7.2 *“Case Number 1803973/2024”; a second copy of the document referred to at 32.4 above.*

21.7.3 *“Confidential – Response for Employment Tribunal”; at first glance this may appear to be a second copy of the grounds of resistance with the new heading as set out at 32.6.1 above. However, there are new changes in this document.*

22. *There are, therefore, 3 versions of the proposed response (or more particularly the narrative grounds of resistance attachment) which have been filed by the Respondent between 30 August 2024 and 4 September 2024, the latter two bearing the heading “The Reconsideration Application”, but only the third contained in the zip file “Case 1803973/2024” which actually adds anything other than the new heading.*

23. *This is what the third proposed response opens with:*

***“The Reconsideration Application***

*Robin Smith v Wesco EMEA Limited – Case number 1803973/2024 from Leeds Employment Tribunal.*

*Please see attached a top level summary of our response to the Particulars of Claim followed by a more detailed response for your consideration.*

*We ask the Tribunal to consider that the claim should be struck out as we consider this to be a vexatious claim; the Claimant was not dismissed (whether by reason of redundancy or otherwise) but voluntarily resigned and therefore his claim has no reasonable prospect of success.*

We did not receive the notice of the claim (via the post, nothing electronic) until after the deadline. After receiving the notice on August 20th 2024, we contacted the Employment Tribunal to ask for an extension as we intended to defend this claim, based on the attached reasons, and we did submit a response to the claim on August 30th, 2024 after not hearing back around an extension. Unbeknown to us at the time, a decision had been made in favour of the Claimant which we are contesting.

As well as an application for strike out, we will apply for a deposit order to be made if the Claimant continues with his claim and will apply for costs to be paid due to the vexatious nature of the claim.”

24. *I have underlined above the new text which has been added compared to the original response form filed by the Respondent.*
25. *The new text appears to have been also inserted into the notice of appeal document.*
26. *The Respondent has confirmed to me today that they have not submitted an appeal to the Employment Appeal Tribunal, and that they could not do so because the case number could not be found (they entered the Tribunal number not an Appeal Tribunal number).*
27. *I should make it clear to the Respondent that none of the actions I am taking today will activate and appeal to the Employment Appeal Tribunal; if the Respondent wishes to do that it is up to them to contact the Employment Appeal Tribunal.*
28. *On 9 October 2024 the Tribunal wrote to the Respondent explaining that correspondence must be copied to the [Respondent] **claimant** and stating that the application for an extension of time could not be considered because it had not been copied to the [Respondent] **claimant**. The letter states “additionally, you may want to provide further information regarding the reason for the delay. Please reply within 7 days.” There is reference to the online submission being to the Employment Appeal Tribunal but not to the Tribunal, whereas there appear to be screenshots of attempts to do both in the email.*
29. *It does not appear obvious to me that the letter dated 9 October 2024 took into account the attachments to the email dated 4 September 2024, nor are they on the paper file.*
30. *I suspect the Tribunal was being generous to the Respondent, which is unrepresented although it appears to have in house legal professionals, in suggesting that they may wish to provide further information about the reason for delay in responding to the claim. Having gone through the documentation with the parties today, it appears that the only comments that the Respondent has made at this point concerning the reasons for delay are those set out in italic above. In summary:*

- 30.1 *The Claim form was not received by the “relevant department” until 20 August 2024.*
- 30.2 *It was not sent by recorded delivery.*
- 30.3 *It was not sent by the Claimant.*
- 30.4 *It was not addressed to the legal department, the HR department, nor any team or individual.*
31. *I say generous because the Respondent’s first point does not confirm when the notice of claim was received at the registered office, and the second, third and fourth points are not required steps for the service of a claim.*
32. *The Respondent appears, when it responds to the Tribunals letter dated 9 October 2024 on 11 October 2024, not to pick up on the request for more information about the reasons for delay in filing the response, it simply challenges the assertion (in the Tribunals letter) that the Claimant had not been copied into the application for an extension in time dated 21 August 2024.*
33. *It appears from reviewing the emails and discussing the issue with the parties that the Claimant did not copy the Respondent into the application for an extension of time on 21 August 2024, but a copy was enclosed with the application for reconsideration on 4 September 2024, as part of the attachments, which was additionally sent by post to the Claimant (and to the Tribunal) by recorded delivery indicating receipt on 6 September 2024.*
34. *Nonetheless the Respondent provides no additional explanation of the reasons for delay therefore when the correspondence is referred within the Tribunal on 24 October 2024 a letter is sent to the Respondent which sets out that “Employment Judge James has asked for your comments on the reasoning as to why the response to the claim was submitted late. Please reply by 29 October 2024.”*
35. *On 29 October 2024 the Respondent replied to the Tribunal:*
- “I fear I now have to request your complaints policy. It seems that none of the correspondence that we submitted to the tribunal explaining in detail why the defence was initially not filed in time (due to tribunal administrative error) as detailed in the attached emails which you were in receipt of some weeks ago) does not seemed to have made its way to you.*

*May I ask why our detailed submissions are not being read and considered in the overall context of our defence?*

*To summarise again for your records:*

- 1. The tribunal failed to send the claim to a named person or department at our registered office.*
- 2. Further we have provided proof of receipt of the claim form which was received after the deadline for a response submission had expired.*

3. *We sent a detailed defence to you as well as our application for a extension of time to respond (due to late receipt of the initial claim form from yourselves as we have evidenced).*
4. *We were further unable to submit our application online as your system was down – we sent you screenshots and evidence of this at the time.*

*We have followed every procedural step in a reasonable time frame as soon as we have been in receipt of correspondence from you. We have even come to tribunal physically to follow this up as we do not feel that our correspondence and documentation is being reviewed.*

*Please may I ask that an individual is assigned to this matter whom can look at the chronological steps and review our file as a whole so that you can see that any of our submissions have in fact, been made in time, and where they have not, the extenuating circumstances were that the tribunal had contributed to the delay.”*

36. *We discussed this email today.*
37. *I specifically asked the Respondent’s representative about the “proof of receipt of the claim form which was received after the deadline for a response submission had expired” referred to in numbered paragraph 2 in their email dated 29 October 2024.*
38. *The documents referred to there, the Respondent confirmed, are the two photographs of the envelopes (see 32.1 and 32.2 above). It should be pointed out that these show nothing about the date on which they were received, and are certainly not proof that they were received by the Respondent after the time limit for filing a response had expired.*
39. *I do observe, in case it is missed in the plethora of documentation, that the Respondent has never asserted a particular time that it suggests the notice of claim was received at their registered office (as opposed to when it arrived at their “relevant department”).*
40. *It appears that the Respondent has said all that it wishes to say about the reasons the response was submitted late. I have taken care to capture it all and highlight those comments in italic font above.*
41. *The Respondent is taking the Tribunal’s requests for further information as an indication that their previous communications have been ignored whereas I think the reality is that the Tribunal felt the Respondent should provide a more complete explanation for the delay in filing the response.*
42. *But it is a matter for them whether or not they choose to take that opportunity. They appear instead to simply be attributing the delay in sending their response to the notice of claim being addressed to their registered office, which they term an “administrative error” on the part of the Tribunal. The Respondent is seemingly unaware that UK law is underpinned by the notion*



*that service on a company's registered office is the correct mode of service upon a registered company.*

43. *I also wish to note that although the Respondent feels that the Tribunal is ignoring the lengthy response to the claim it has submitted that is also not the case. The Tribunal was simply requesting for more information about the reasons for the delay in submitting the response. The details that the Respondent has provided in the proposed response, so far as they set out the merits of the Respondent's response, will be considered to the extent that is appropriate when the Tribunal considers the applications made by the Respondent."*

#### The law and the application to extend time for a response

2. Rule 20 provides of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013:

##### ***Applications for extension of time for presenting response***

**20.—***(1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.*

*(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.*

*(3) [E1The Tribunal] may determine the application without a hearing.*

*(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside.*

3. Rule 5 also contains a general power to extend time , whether or not a particular time limit has expired.
4. **I repeat for clarity the application that was made and the circumstances:** *A matter of a couple of hours before the Rule 21 Judgment was emailed and posted to the parties, on 21 August 2024, an email had arrived at the Tribunal (but presumably was not immediately linked to either file) from the Respondent which read as follows:*

*"I am writing to you with regards to the above case number 1803973/2024. The notification of this claim was received by the relevant department on 20<sup>th</sup> August. I appreciate the official deadline has passed but would like to request an extension for us to be able to formally respond. I look forward to hearing from you".*

5. *There were no attachments to the email and the Claimant was not copied into the correspondence.*
6. The respondent then submitted an online response form with particulars and exhibits on 30 August 2024. It is unclear whether that was in fact copied to the claimant by some means of the online submission system, but it appears not.
7. Decision: in all the circumstances and whether these two communications are one application or two applications, they are refused. The first was not made in accordance with Rule 20 because it was not copied to the claimant. It is not in the interests to apply Rule 5 alternatively to give an extension of time, notwithstanding a failure to comply with Rule 20 because:
  - 7.1. the respondent had in house legal representation and appears to have considerable resources given its size indicated in the draft response – it could have instructed specialist advice or researched the service of Employment Tribunal claims;
  - 7.2. the matter of when the service documents were actually received by the respondent has been addressed in a very opaque manner by the respondent - saying the claim did not reach the relevant department until 20 August – the reasons for an extension are not compelling;
  - 7.3. post to the registered office is good service; that is what happened; there was no post returned (as is sometimes the case);
  - 7.4. in all likelihood it was a failure in the respondent's post handling systems which led to the delay;
  - 7.5. the respondent now appears to be even more mistaken about the service of those documents, or worse to seek to mislead the Tribunal – about which see further paragraph 9 below;
  - 7.6. assessing the merits of a response at this very early stage require caution, but the respondent's assertion that: "An employee does not have the right to ....nor unilaterally end a secondment whilst there is still a need for a secondee" appears without reasonable prospects of success given the terms of the secondment (including the notice provision);
  - 7.7. the balance of the respondent's defence rests on a construction of the August email as a resignation from employment (when plainly it was not) having had sight of it – that contention is without reasonable prospects of success and that properly affects the exercise of discretion in granting an extension of time.

#### Law on reconsideration

8. Rule 72 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 provides that the Employment Judge shall consider any application to reconsider a Judgment and shall consider whether *If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal.....*

#### Consideration and Decision

9. The broad picture is this. The claimant presented a clearly pleaded claim referring expressly to the claimant's notice to end his secondment (rather than his employment) and the terms of it. The respondent has a weak defence. It has given confusing information (as recorded above) about when the service papers were received in seeking an extension of time. The delay it seeks to bridge is around three weeks, but it says, in terms, the weakness of the claimant's claim and the Tribunal's handling of it are grounds for a reconsideration. It further says in its 4<sup>th</sup> September reconsideration application, which attaches a photograph of an envelope with a date visible in the letter of 12 August 2024, that it is proving that the Tribunal sent the papers late.
10. The photograph is of an envelope window showing an address typed in "Times Roman" font or similar type face. The respondent seeks to say this is the letter with the service papers – and the Tribunal clearly posted the papers late. It is, in my judgment, not a photograph of the service papers envelope at all. There is a copy of the letter which was sent to the respondent in the Tribunal's file, and that corresponds to the usual "Arial" type face, and, the date of the letter is 2 July 2024 – albeit it is unlikely that date would be visible in the envelope address window. The address is the correctly typed registered office (unlike the photograph which misses the "d" from "limite\_". The service letter said a response must be received by 30 July 2024.
11. It will be apparent from my reasons to reject the extension of time applications, that I do not consider the claimant's claim weak. The reverse of that is true – the respondent's proposed defence has great challenges to overcome such that I consider it has little reasonable prospects of success. Further, its position on the service papers has now taken an even more unhelpful turn, and it is either deliberately seeking to mislead the Tribunal, or is unwittingly very confused about the papers that were posted to its registered office. I assume the latter, but the overarching circumstances are such that there is no reasonable prospect of my Judgment being varied or revoked. There is no basis to suggest at all that the claimant has achieved an unjust windfall in these events.
12. The respondent's application has no reasonable prospects of the Judgment being varied or revoked and the application is therefore refused in accordance with Rule 72(1).

Employment Judge JM Wade

Date 9 December 2024

**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.