



EMPLOYMENT TRIBUNALS

Claimant: Ms P Angelova

Respondent: Greencore Food to Go Ltd

Heard at: Manchester (in private; by video) **On:** 27 September 2024

Before: Employment Judge Dunlop

Appearances

For the claimant: In person

For the respondent: Ms E Kelly (solicitor)

In a case management hearing on 27 September 2024, Employment Judge Dunlop extended time for the presentation of the respondent's response to the claim and accepted the response which had been presented late. The Order is recorded in the Tribunal's Case Management Order document. Reasons were provided orally. The claimant wrote to the Tribunal (before the case management orders were promulgated) expressing her intention to appeal. The Judge has taken that email as a request for written reasons in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. Ms Angelova's claim form was presented on 12 June 2024. The complaints are not entirely clear from the claim form, but Ms Angelova had ticked boxes indicating that she wished to complain about discrimination on the grounds of both race and disability. The narrative indicated that the respondent's treatment of her had caused her to sustain an injury, and that the respondent had forced her to continue with her current (physical) job role rather than permitting her to move to lighter duties.
2. Notice of the claim was sent to the respondent, at the address provided on the claim form, by letter dated 24 June 2024. The notice provided that a response was due by 22 July 2024. At the same time, a notice of hearing was issued for a preliminary hearing for case management. That is standard practice for claims involving discrimination allegations. The preliminary hearing was listed for 27 September 2024.

3. On 13 August 2024 the Tribunal sent a standard letter to the respondent informing it that it had failed to enter a response and that Judgment may now be issued.
4. On 16 August 2024 Eversheds Sutherland, solicitors acting on behalf of the respondent, wrote to the Tribunal applying to extend time for presentation of the response and supplying a draft response and grounds of resistance. The application accepted that the address given in the ET1 was correct, and explained the arrangements for handling post at the respondent's premises. It noted that the 'response not received' letter had been successfully received on 14 August 2024 (one day after posting) but that the original service documents appeared to never have been received.
5. Further correspondence ensued, and it was clear that Ms Angelova objected to the respondent being permitted to enter a late response and take part in the proceedings. She wanted a Judgment to be issued under Rule 21. The parties were told that the respondent's extension of time application would be dealt with at this preliminary hearing.

The Law

6. The principles in relation to granting extension of time for presentation of a response in the Employment Tribunal are settled. Rule 20 of the Employment Tribunal rules of Procedure 2013 does not set out any specific test to be applied, giving the Tribunal a wide discretion, subject to the general requirement under Rule 2 to deal with cases "fairly and justly".
7. In the key case of **Kwik Save v Swain [1997] ICR 49**, the Employment Appeal Tribunal set out the matters to be considered in an extension of time application. Although this was a decision taken under an earlier iteration of the Employment Tribunal Rules of Procedure, these remain the principles that are applied today. According to that decision, the following factors are relevant:
 - 7.1 The employer's explanation as to why an extension of time is required.
The more serious the delay, the more important it is that the employer provide a satisfactory and honest explanation.
 - 7.2 The merits of the defence
In broad terms, Judges should look more sympathetically at a defence which appears to have merit, as there is more risk of injustice if the claimant succeeds by default.
 - 7.3 The balance of prejudice between the parties
8. More recent guidance comes from **Thorney Golf Centre Ltd v Reed 2024 EAT 1996**. In his Judgment in that case, HHJ Auerbach emphasised the need to analyse the delay caused by the respondent's actions, and the reasons for that delay.

Discussion and conclusion

9. I commented during the hearing that, given the claimant's strenuous objections to the extension of time application, it would have been useful for the respondent to have provided witness evidence to support the account given in the application about its mail-handling procedures, and the fact that

the original service documents appear not to have arrived. I was unable to make findings of fact about those matters from the solicitors' letter.

10. However, I can make a finding of fact, based on the record of correspondence, that the respondent, and its solicitors, acted exceptionally quickly to prepare a response and application within 2 days of receiving the 'response not received' letter on 14 August. The effect of giving the claim urgent attention at that stage, was that the preliminary hearing on 27 September 2024 was able to go ahead as listed. There was therefore no delay at all to the progress of the proceedings, consequent on the late response.
11. The merits of the defence are difficult to assess in circumstances where the claim is not fully clarified. Further details in respect of this are set out in the case management document. At the very least, it seems to me that there are significant difficulties with some parts of the claim and, for that reason alone, the defence may well succeed if the respondent is permitted to resist the claim.
12. To my mind, the balance of prejudice in this case is clear, and overwhelmingly favours the respondent. As explained above, there has been no delay to the proceedings, so the only prejudice the claimant has suffered has been the loss of a 'windfall' victory. On the other hand, these are serious allegations and a judgment against the respondent could have significant consequences, in both reputational and financial terms.
13. The claimant argued that she is in physical pain and will have difficulty attending hearings and prosecuting her case due to that. Of course I am sympathetic to the claimant in this regard, and that is a difficulty which will have to be carefully managed through the provision of whatever adjustments may be reasonable and appropriate. However, that is not a prejudice which arises from the respondent's late presentation of its response. The overriding objective requires me to deal with cases fairly and justly and put the parties on an equal footing. If I were to refuse the extension of time application simply because this claimant will find the litigation process difficult, it would be grossly unfair to the respondent.
14. If necessary, I would be prepared to infer from the respondent's prompt actions on receipt of the 'response not received' letter that the explanation that the original service documents were not delivered (for whatever reason) is true. However, in view of all the factors set out above, I was satisfied that that I should exercise my discretion to extend time irrespective of whether the respondent's explanation for non-receipt of the original service documents was accepted or not. In those circumstances, although it would have been better for the respondent to produce evidence, it ultimately made no material difference to the outcome.

Employment Judge Dunlop

Date: 4 October 2024

WRITTEN REASONS SENT TO THE PARTIES ON

Date: 7 October 2024

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FOR EMPLOYMENT TRIBUNALS

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