EMPLOYMENT TRIBUNALS

Claimant: Mr A Levy

Respondent: Dr Fenske and Partners

RECORD OF A PRELIMINARY HEARING

Heard at: Huntingdon (in private) **On:** 6 August 2018

Before: Employment Judge Ord (sitting alone)

Appearances
For the claimant: In person.
For the respondent: Mr Powlesands, Counsel.

JUDGMENT ON RECONSIDERATION

1. The respondent's application for a reconsideration of the judgment is allowed. The judgment dated 2 July 2018 is set aside.

2. The respondent has an extension of time up to 6 August 2018 to submit its response. The response submitted to the Tribunal on 26 March 2018 is accepted as the respondent's response to the claimant's complaints, albeit at the time presented out of time.

3. The costs of and incidental to the entry of judgment, the application for reconsideration and the hearing of that application are to be paid by the respondent to the claimant, to be summarily assessed if not agreed on the litigant in person rate.

4. The claimant is to submit a schedule of such costs to the respondent and copy to the Tribunal by 20 August 2018. The respondent is to reply to the schedule by 3 September 2018. If the question of costs is not agreed by 10 September 2018 the costs will be summarily assessed, on paper, by Employment Judge Ord.

REASONS

1. The proceedings in this case were commenced by the presentation of a claim form by the claimant to the Tribunal on 5 February 2018. The claimant had engaged in early conciliation through ACAS commencing on 4 January 2018 and the early

conciliation certificate is dated 17 January 2018. The claimant brings claims for unfair dismissal and for detriment as a consequence of having made protected disclosures.

2. The claims form and notice of claim together with Form ET3 for completion were sent by the Tribunal to the respondent, properly addressed at the respondent's address, on 26 February 2018. A copy was sent to ACAS. In the notice of claim the respondent was advised that if it wished to defend the claim its response must be received at the Tribunal by 26 March 2018.

3. No such response in Form ET3 was submitted.

4. The matter was considered on paper by Employment Judge Foxwell on 24 May 2018. The hearing listed for 6 August 2018 as a preliminary hearing was converted to a remedy hearing and notice of that fact was sent to the parties on 8 June 2018.

5. On 13 June 2018 an email had been received by the Tribunal from DAS Law, instructed on behalf of the respondent. It referred to an earlier email which it was said "may have been received by the Tribunal" with DAS Law stating that they had received "no response from the Tribunal in respect of the matter". The enclosure to that email was a Form ET3 and form of response, and the earlier email referred to was dated 26 March 2018 address to "HuntingdonET@hmcts.gsi.gov.uk'.

6. The claim was issued out of the South East Region of the Employment Tribunal based in Watford. Every document issued by the Tribunal in this case bears the Watford address. No reference to any tribunal administration in Huntingdon has been issued by the Tribunal.

7. The Form ET3 and enclosure was sent to Huntingdon Employment Tribunal on 26 March 2018 at 5.29pm. In the bundle of documents, prepared by the respondent for the purpose of today's hearing is an email the subject of which is "Auto reply" timed at 5.29pm on 26 March 2018 which states this:

> "Huntingdon Employment Tribunals administration has been transferred to the Watford Office. Please contact Watford whose details are as follows: [setting out the postal address, telephone number and email address for the tribunal]"

8. In a statement prepared for today's hearing Ms Knight of DAS Law said she "received what appeared to be an auto reply from the Tribunal (referring to the email detailed above)" but "did not receive a formal acknowledgement of the defence". She said that she was initially "not concerned by the delay in view of the fact that I was aware that Employment Tribunals were at that point in time experiencing substantial and significant delays" but became "increasingly concerned" that she had heard nothing by 13 June 2018 and "discovered that Huntingdon Tribunal correspondence was now in fact being dealt with by Watford Employment Tribunal".

9. Ms Knight makes no apology for any of these errors, nor does she explain how and why papers which were clearly issued by Watford Employment Tribunal should be responded to by sending an email to Huntingdon, why the content of the

auto reply did not alert the respondent's solicitors to their error, nor why it took almost three months for her to take any further steps.

10. The respondent's solicitors wrote on 19 June 2018 to the Tribunal by stating:

> "In the event that there is any reason that the Tribunal would conclude that the defence has been submitted outside of the time limit, we would respectfully request the Tribunal allows the defence given it was submitted via email within the appropriate timeframes and appears to have gone array. We submit that it would be in the interests of justice and in accordance with the overriding objective to do so."

Without noting that the delivery of a response to the wrong address is not delivery within the rules of the Employment Tribunal.

11. On 18 July 2018 the respondent made an application for reconsideration of the default judgment and on 25 July 2018 Employment Judge Sigsworth directed that a reconsideration hearing should be held today, 6 August 2018.

12. In their draft response the respondent clearly identified triable issues for consideration by the Tribunal. It is in the interests of justice to allow the respondent to set aside the judgment which was obtained in default of a response being validly submitted, and to extend time to allow the response, incorrectly sent to the wrong address, to stand as the response in this case. It is equally appropriate to exercise my jurisdiction to make an order for costs in favour of the claimant who is unrepresented and has been throughout the process and therefore the appropriate order is a preparation time order which I make under rule 76. The submission of a response to an address which had no connection whatsoever with the proceedings in question, for which no explanation has been given and where a party waited three months before being alerted to the fact that the response had not been validly received amounts to unreasonable conduct. The claimant has incurred costs relating to the entry of judgment, days application and attendance upon it and a preparation time order is therefore made in his favour.

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Employment Judge Ord

Date: 31 August 2018

Sent to the parties on:

For the Tribunal:

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