



EMPLOYMENT TRIBUNALS

Claimant: Mr M Merchelski
Respondent: Amazon UK Services Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Cambridge **On:** 28 February 2019
Before: Employment Judge Finlay (sitting alone)

Appearances

For the claimant: Miss Wisniewska, Lay Representative
For the respondent: Miss C Urquhart, Counsel

UPON APPLICATION under rule 71 Employment Tribunals Rules of Procedure 2013 made by the respondent to reconsider the judgment dated 20 December 2018.

JUDGMENT

The Judgment of the Employment Tribunal is as follows:

The Judgment dated 20 December 2018 made under Rule 21 is revoked.

REASONS

- (1) This was the hearing of the respondent's application for reconsideration of the 'Default Judgment' made on 20 December 2018. The respondent was represented by Miss Urquhart of Counsel and the claimant by Miss Wisniewska, a Lay Representative.
- (2) Both parties produced helpful submissions and chronologies. The respondent also produced a bundle of relevant documents. There was in fact little or no dispute as to the chronology. The respondent called Mr Paul Moloney who

works for Swiss Post Solutions, the company contracted by the respondent to manage the mail rooms at its two London addresses at 60 Holburn Viaduct and 1 Principal Place.

(3) The relevant chronology is as follows:

- (i) The claimant was dismissed on 30 April 2018 and the process of Early Conciliation with Acas took place in June and July 2018, involving conversations with the respondent's solicitors, Eversheds.
- (ii) On 13 July 2018, Miss Wisniewska presented the claimant's claim form online giving the Holburn Viaduct address for the respondent. This was the correct address. However, Miss Wisniewska did not complete the box which states the claimant's physical work location. The proceedings were then initially allocated to London Central Employment Tribunal, presumably because of the Holburn Viaduct address.
- (iii) On 20 August 2018, the London Central Employment Tribunal contacted the claimant to ask where the claimant had physically worked. Miss Wisniewska responded immediately giving the address in Bedfordshire and the file was then forwarded to the Watford Employment Tribunal, the administrative centre for the relevant Employment Tribunal Region.
- (iv) On 7 September 2018, the proceedings were sent out to the parties – to the respondent at the Holburn Viaduct address. The respondent was given until 5 October 2018 to respond.
- (v) On 19 September 2018, Acas sent its standard conciliation letter to both parties, again using the Holburn Viaduct address for the respondent.
- (vi) On 5 December 2018, Acas contacted Eversheds requesting a copy of the ET3. I accept that this was the first occasion on which Eversheds and the respondent were aware that the claim had been issued.
- (vii) On 12 December 2018, Eversheds made enquiries of London Central Employment Tribunal. There was a slight delay, but this was primarily caused by the relevant fee earner being on secondment and at that stage, Eversheds could not reasonably have known the urgency of the matter.
- (viii) On 14 December 2018, the tribunal responded to say that the proceedings had been transferred to Watford Employment Tribunal and that Watford Employment Tribunal would send out the documentation as soon as possible.

- (ix) On 19 December 2018, Watford Employment Tribunal sent the claim form to the respondent such that it arrived the same day. Within five hours, Eversheds made an application to extend time on behalf of the respondent.
 - (x) Also on 19 December 2018, an Employment Judge directed that relevant correspondence be sent to the respondent at both the Holburn Viaduct and the 1 Principal Place addresses.
 - (xi) On 20 December 2018, an Employment Judge entered the 'Default Judgment' which was received by the respondent on 24 December 2018.
 - (xii) On 2 January 2019, the respondent submitted its application for reconsideration. The claimant objected on the following day. On 4 January 2019 the respondent filed and served its ET3 and grounds of resistance.
- (4) Mr Moloney gave evidence that his company has a robust system for dealing with incoming mail. All staff are trained on this system and are specifically trained to look out for documentation which may emanate from Courts or Employment Tribunals. The respondent cannot say that the claim form was not received at the correct Holburn Viaduct address and even though it was going through a relocation at the time, it accepts that it should have received it.
- (5) The legal test I must apply under Rule 70 is whether it is 'in the interests of justice' to allow the application.
- (6) The application was opposed strongly by Miss Wisniewska on behalf of the claimant. She submitted that the time limits in the Employment Tribunal are there to be adhered to and that the claimant had done everything correctly and within time (even supplying quantum documentation within a very short time scale). She further submitted that there was no reason to think that both the claim form and the Acas letter had not been received by the respondent. However, she was not able to point to any specific prejudice to the claimant by a delay in the proceedings should I grant the application.
- (7) For the respondent, Ms Urquhart asked me to consider a number of factors:
- (i) The respondent cannot say definitively that the post was not received, but it is certainly possible, taking into account the robust procedures operated by Mr Moloney's company. I accept this.
 - (ii) The respondent acted in a timely fashion in making the initial application to extend time and the subsequent application for reconsideration. Despite the slight delay in December, I accept this as well.
 - (iii) The respondent has reasonable prospects of successfully defending the claim. I am not in a position to assess the merits of the claim or

defence, but it is clear that the claim would be defended and there are complaints which the tribunal could not determine without hearing all of the evidence.

- (iv) The respondent would be at a substantial disadvantage if I did not grant the application. It would be deprived of defending not only an unfair dismissal claim but also a discrimination complaint. On the other hand, the claimant might receive an unmerited windfall.
- (8) Ms Urquhart referred me to the case of Kwik Save Stores Ltd. v Swain [1997] ICR 49. Both parties referred me to the case of T and D Transport (Portsmouth) Limited v Limburn [1987] ICR 696 and Miss Wisniewska also referred me to Migwain Ltd v TGWU [1979] ICR 597. I have considered all of those cases but ultimately, the Tribunal has a wide discretion to balance all relevant factors to determine whether it is in the interest of justice to allow the application.
- (9) I do have sympathy for the claimant. As Miss Wisniewska has pointed out, he has done nothing wrong and has adhered to all time limits. However, weighing up all relevant factors and even though it cannot be determined whether or not the claim form was received by the respondent in September, I consider it is in the interests of justice to allow the application. In particular, the respondent has acted in a timely manner once the claim was brought to its attention and the balance of prejudice is clearly in the respondent's favour. There is no reason why the claimant could not now have a fair trial of his case despite the delay which has taken place.
- (10) Following the hearing of the respondent's application there was time for a brief case management discussion and the tribunal made case management orders which will be sent to the parties in a separate document.

Employment Judge Finlay

Dated: 24 March 2019

Sent to the parties on:

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For the Tribunal:

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