



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4108826/21 (P)

Held on 8 July 2021

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Employment Judge N M Hosie

Mr S Matthews

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**Claimant
Represented by
Ms J Nelson,
Trainee Solicitor**

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Petrofac Facilities Management Limited

**Respondent
Represented by
Ms S Holwill,
Solicitor**

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Judgment of the Employment Tribunal

The Judgment of the Tribunal is that:-

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- (1) the "Rule 21 Judgment", dated 28 June 2021, is revoked;
- (2) the time for presentation of the ET3 Response Form is extended to 28 June 2021;
- (3) the ET3 Response Form, which was presented on 28 June 2021, is accepted;
- (4) the respondent is ordered, within 14 days of receipt of this Judgment, to send to the Tribunal, copied to the claimant's solicitor, further and better particulars of the grounds of resistance ;

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(5) the respondent, if so advised, will send to the Tribunal, copied to the respondent's solicitor, a written response to the respondent's further and better particulars, within 14 days of receipt of them; and

(6) the claimant, if so advised, can make an application to the Tribunal, copied to the respondent, within 14 days, for an award of expenses; in the event of such an application, the respondent should respond within 14 days thereafter.

REASONS

10 1. This case has something of a history. On 31 March 2021, the claimant's solicitor submitted a claim form. The claim comprises complaints of detriment, contrary to s.47B of the Employment Rights Act 1996 ("the 1996 Act"); automatic unfair dismissal under s.103A of the 1996 Act; and unfair dismissal under s.98.

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2. ON 8 April, notice of the claim was intimated by the Tribunal, by first class post, to the respondent at their business address in Aberdeen. The respondent was required to submit an ET3 Response Form by no later than 6 May 2021. No such Response was received. The respondent was also advised that there would be a preliminary hearing, by telephone conference call on 2 June at 0930. The Tribunal's letter to the respondent was not returned by the Post Office as undelivered.

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3. On 12 May 2021, the respondent was reminded, by first class post, that a case management preliminary hearing would be held on 2 June. No response was received to that letter. The letter was not returned by the Post Office as undelivered.

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4. There was no appearance by or on behalf of the respondent at the preliminary hearing on 2 June. The Note which I issued following that hearing, on 4 June,

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to both parties, by first class post, is referred to for its terms. The covering letter which with was sent to the respondent with my Note was not returned by the Post Office as undelivered.

- 5 5. On 7 June, the Tribunal sent a letter to the respondent, by first class post, to advise that if the Tribunal did not receive an ET3 Response Form within 7 days a "Rule 21 Default Judgment" would be issued. No response was received from the respondent. The letter was not returned by the Post Office, as undelivered. Accordingly, I signed a "Rule 21 Judgment" on 28 June and
10 it was sent to the parties on 29 June.
6. By e-mail on 28 June 2021 at 17:46 the respondent's solicitor advised that she had been instructed by the respondent on 25 June. She applied for an extension of the time for presenting the ET3 Response Form under Rule 20
15 of the Tribunal Rules of Procedure and attached the respondent's ET3 and "skeleton grounds of resistance".
7. By e-mail on 6 July 2021, the claimant's solicitor intimated that she objected to the respondent's application to extend time.
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8. As the Rule 21 Judgment had been signed before the respondent's application to extend time had been received, on 6 July the respondent's solicitor applied for a reconsideration of the Judgment under Rule 70. On 7 July, the claimant's solicitor intimated that she objected to the application for a reconsideration on the same grounds as she objected to the respondent's
25 application for an extension of time.
9. I decided, with reference to Rule 72(2), that a hearing was not necessary in the interests of justice and that I could deal with the application on the basis
30 of the parties' written submissions.

Discussion and decision

10. Under Rule 70, a Judgment can only be reconsidered where it is '*necessary*' in the interests of justice to do so. While this affords Tribunals a wide discretion, it must be exercised judicially which means I must have regard not only to the interests of the party seeking the reconsideration but also the interests of the other party. I also require to have regards to the requirement that there should, so far as possible, be finality of litigation.
11. While I was mindful of the effect on businesses of the Covid-19 Pandemic and was advised that prior to June 2021 the respondent's offices were closed, I was surprised that a business of the size and administrative resources of the respondent Company had apparently not taken any steps to put a system in place to check mail being delivered to its office. Further, in the present case, the respondent was aware that following the claimant's dismissal on 20 November 2020 he had "triggered ACAS Early Conciliation". The ACAS notification is dated 5 February 2021 and a certificate was issued on 5 March 2021.
12. Not only was the claim intimated to the respondent, there was further correspondence from the Tribunal which apparently was delivered but went unanswered. There was also a delay of some 12 days from 16 June when the respondent accepted that they had received intimation of the claim to 28 June when the respondent's solicitor applied for an extension.
13. However, the test is whether a reconsideration is "in the interests of justice" and, albeit with some hesitation, having regard to the respondent's delay in responding and what appeared to be a somewhat cavalier attitude to these proceedings, I was persuaded that the representations by the respondent's solicitor were well-founded.
14. In arriving at the view that it was in the "interests of justice" to revoke the Rule 21 Judgment and allow the ET3 Response Form to be received late, I had

regard to the “overriding objective” in the Rules of Procedure. I also had regard to the fact that, at least on the face of it, there appeared to a stateable defence to the claim and the interests of justice required evidence to be heard at a final hearing. I was also of the view that the balance of prejudice favoured the respondent and that the delay would not affect the cogency of the evidence.

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15. Accordingly, I decided that the Rule 21 Judgment should be revoked; that the application by the respondent for an extension of time for presentation of the ET3 form should be allowed; that the ET3 Response Form should be received; and that the claim should proceed on a defended basis.

Expenses

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16. In her representations, the claimant’s solicitor made reference to the additional expense which the claimant had incurred as a consequence of the respondent’s failure to submit the ET3 Response Form in time. In all the circumstances, I am prepared to consider an application for an award of expenses against the respondent. Should the claimant wish to make such an application, his solicitor should do so in writing to the Tribunal, copied to the respondent’s solicitor within 14 days. In that event, the respondent’s solicitor will have an opportunity of responding in writing to the Tribunal, copied to the claimant’s solicitor within 14 days thereafter. I shall then consider the parties’ representations and issue a Judgment “on the papers”.

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EJ N M Hosie

Employment Judge

14th of July 2021

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Dated

14th of July 2021

Date sent to parties

