



EMPLOYMENT TRIBUNALS

Claimant: Miss M Farrant

Respondent: Learnmore Network Ltd

Heard at: Bristol (VHS) **On:** Friday 16 September 2022

Before: Employment Judge A Matthews

Representation:
Claimant: Mr R Farrant (Claimant's Father)
Respondent: Ms D Grennan of Counsel

Reserved JUDGMENT

The Respondent's application for an extension of time for presenting a response in these proceedings under rule 20 of the Employment Tribunals Rules of Procedure 2013 is allowed.

REASONS

INTRODUCTION

1. These proceedings were originally to come before the Tribunal for a remedy hearing following non-presentation of a response, as set down in a letter from the Bristol office of the employment tribunals dated 11 July 2022 (41-43). (All references are to pages in the Respondent Company's "electronic" bundle of documents unless otherwise specified).
2. However, in the meantime, the Company had applied for an extension of time to allow it to enter a response and Miss Megan Farrant had opposed that application. As a result, on 9 August 2022, the employment tribunals wrote to the parties to say that an Employment Judge had directed that the issue would be determined as a preliminary issue at the remedy hearing on 13 September 2022.

3. The Tribunal heard evidence on the preliminary issue from Ms Karen Smiter (Office Receptionist with CSL Partnership Limited) and Ms Becky Newell (Managing Director of the Company). Each produced a written statement (15-18).
4. The two hours allowed for the hearing provided sufficient time for the Tribunal to hear the parties on the extension of time issue and to discuss what would happen next, depending on which party succeeded on the preliminary issue. The Tribunal reserved judgment on the preliminary issue. As the Company has succeeded in its application, the Tribunal has now made appropriate case management orders.
5. The hearing was a remote hearing using the VHS Platform consented to by the parties. The Tribunal is satisfied that, in this case, the overriding objective of dealing with cases fairly and justly could be met in this way.

FACTS

6. By a claim form lodged on 20 May 2022 Miss Farrant brought claims of unfair dismissal (in the narrative referred to as “Automatic”), disability discrimination, sex discrimination and (again, within the narrative) wrongful dismissal.
7. The claim was accepted. On 27 May 2022, it was sent by the employment tribunals to the Company at its registered office, 238 Station Road, Addlestone, Surrey KT15 2PS. This address was used for later communications from the employment tribunals. This is the address of the Company’s accountants, CSL Partnership Limited, used by the Company as an accommodation address for its registered office.
8. On the same day, 27 May 2022, the employment tribunals also sent the Company a notice of a preliminary hearing for case management by telephone. It is unclear whether this was sent in the same envelope as the claim form or in a separate envelope. This is not material to the decision the Tribunal must make.
9. On 8 July 2022 the employment tribunals sent a “no response received” letter to the Company (39). This was followed on 11 July 2022 by the notice of this hearing referred to in paragraph 1 above.
10. Ms Smiter’s evidence is that there is no trace of any of the four communications from the employment tribunals listed above being received at the Addlestone address. Ms Smiter’s evidence is at 15-16.
11. As the 11 July 2022 notice of hearing had directed, Mr Farrant sent a Schedule of Loss to Ms Newell by e-mail on 14 July 2022 (1).

12. Having tried to contact the employment tribunals through her HR representative, on 21 July 2022 Ms Newell sent an e-mail to the tribunals in which she explained, in terms, that Mr Farrant's email of 11 July 2022 was the first she had known of any employment tribunal proceedings brought by Miss Farrant (1). The Tribunal accepts Ms Newell's evidence on this. Ms Newell's statement is at 17-18.
13. On 27 July 2022 Ms Gillian Patch of PatchLaw sent an email to the employment tribunals applying for an extension of time under rule 20 of the Employment Tribunals Rules of Procedure 2013 (the "Rules") for the Company to present its response in these proceedings (12-18). The application was copied to the Claimant.
14. On 1 August 2022 Mr Farrant sent an email to the employment tribunals objecting to the Company's application (65-67).
15. Prompted by a direction of Employment Judge Rayner (19), and having been sent copies of the claim form and other papers, on 3 August 2022 Patchlaw renewed the application for an extension of time, this time including a response (44-60). A hearing was not requested.
16. On a reading of the claim form, it is not clear that Miss Farrant had the necessary two years' service to enable her to bring a claim of unfair dismissal and there may also be an issue about whether or not the claim was brought in time. The "automatically" unfair nature of any dismissal is not specified and there is no immediately discernible factual assertion to support the claim of sex discrimination. These are things that need clarification either between the parties or at a case management hearing.
17. The schedule of loss prepared by Mr Farrant totals £162,449.34. Apart from some double counting, significant sums are claimed for injury to feelings and aggravated damages.

APPLICABLE LAW

18. Rule 16 of the Rules, so far as it is relevant, provides as follows:

"16 Response

(1) The response shall be on a prescribed form and presented to the tribunal office within 28 days of the date that the copy of the claim form was sent to the Tribunal."

19. Rule 18 of the Rules, so far as it is relevant, provides as follows:

"Rejection: form presented late

(1) A response shall be rejected by the Tribunal if it is received outside the time limit in rule 16....”

20. Rule 20 of the Rules, so far as it is relevant, provides as follows:

“Applications for extension of time for presenting response

(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” “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.”

21. The Tribunal was referred to *Kwik Save Stores Ltd v Swain and ors* 1997 ICR 49.

CONCLUSIONS

22. The claim form was sent by the employment tribunals to the Company on 27 May 2022. To be in time a response was required by 24 June 2022. An application for an extension of time was sent to the employment tribunals on 27 July, around a month outside the primary time limit.

23. The *Kwik Save* case was decided when a previous version of the Rules was in force (applying a “just and equitable” test). However, recent case law has confirmed that *Kwik Save* remains relevant to the question of whether or not an application for an extension of time to submit a response should be granted. In essence, when exercising its discretion the Tribunal must take account of all relevant factors, weighing and balancing them one against the other to reach a conclusion that is objectively justified on the grounds of reason and justice.

24. The Tribunal takes all the factors in the case into account but takes particular note of the following.

25. The Company’s explanation as to why an extension of time is required.

26. Whilst the seriousness of a delay of a month is a matter of the viewer’s perspective, the explanation for the delay in this case is more important.

Whilst it is surprising that none of the four communications sent by the employment tribunals to the Company's registered office was received, the Tribunal accepts the evidence that Ms Newell did not know of the proceedings before the employment tribunals until on or around 14 July 2022.

27. The merits of the defence

28. It appears from the response and the other papers available to the Tribunal that, not only does the Company have an arguable defence, but also that some of the claims raise significant questions (see paragraph 16 above).

29. Would the Company, if its request for an extension of time is refused, suffer greater prejudice than Miss Farrant if the extension of time is granted?

30. The prejudice that Miss Farrant will suffer is that the disposal of her claim will be further delayed and she will not have the opportunity to take advantage of any "default" judgment that might be entered under rule 21 of the Rules (as far as the Tribunal can see, no such judgment has yet been entered). In the context of delay, the Tribunal notes the medical evidence that Miss Farrant has a particular susceptibility in this respect.

31. In the Tribunal's view, however, that prejudice is greatly outweighed by the prejudice the Company will suffer in being denied the opportunity to defend the claims in circumstances where it did not know of them and acted promptly to remedy the position as soon as it did. That prejudice would be further exacerbated given the significant question marks over some of the claims and the schedule of loss.

32. For these reasons, the Tribunal extends time for the presentation of the response to allow the response presented to the employment tribunals on 3 August 2022 to be accepted.

Employment Judge A Matthews
Date: 20 September 2022

Judgment & Reasons sent to the Parties: 26 September 2022

FOR THE TRIBUNAL OFFICE