



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105398/2022

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**Preliminary hearing held on the Cloud Video Platform
on 6 December 2022**

Employment Judge A Jones

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Gleddoch Resorts Ltd

**Appellant
Represented by
Mr Gibson solicitor**

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**Martin MacNiven, EHO
Renfrewshire Council**

**Respondent
Represented by
Mr Graham, solicitor**

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JUDGMENT AND ORDERS OF THE EMPLOYMENT TRIBUNAL

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1. The appeal lodged by the appellant was not lodged within 21 days of service, it was reasonably practicable for the appellant to have lodged the appeal within that period and the further period in which the appeal was lodged was not reasonable. Therefore the Tribunal has no jurisdiction to consider the appeal.

REASONS

Introduction

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1. The Appellant presented a Notice of Appeal ('the Appeal') on 30 September 2022 in relation to an Improvement Notice served on it in terms of section 3(1) Health and Safety at Work Act 1974 ('the Act'). The Improvement Notice was dated 31 August. The issue for the Tribunal to determine was whether the Notice of Appeal had been presented in time.

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2. In order to determine that matter, the Tribunal was required to consider whether:

- i. Notice had been properly served in terms of the requirements of section 46 of the Act, and if so, to establish the date on which it was served.
- 5 ii. If the Tribunal found that the Appeal had not been lodged timeously, whether it had been reasonably practicable for the Appellant to lodge the Notice of Appeal timeously.
- 10 iii. If the Tribunal found that it had not been reasonably practicable for the appellant to lodge the Appeal timeously, whether it had been lodged within such further period as the Tribunal considered reasonable in terms of Rule 105 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 ('the Rules').
- 15 3. The hearing took place on the Cloud Video Platform and parties submitted a joint bundle of documents. The Tribunal also heard evidence from Mr Johal a director of the appellant and Mr MacNiven, the Environmental Health Officer who had served the Notice. Parties made submissions and provided various authorities. The Tribunal found both witnesses to be credible and reliable. The issues for the Tribunal to determine were related to the application of the relevant provisions to the facts, which were not in dispute.

Findings in fact

- 20 4. Having considered the evidence, the documents to which the Tribunal was referred and submissions of the parties including the authorities to which reference was made, the Tribunal found the following facts to have been established.
- 25 5. The Appellant company has two directors and a registered office in Nottingham. It operates a Hotel and Golf and Spa Resort outside Glasgow. The registered office is not permanently staffed. Mr Robert Johal, one of the company directors who has primary responsibility for the running of the hotel is based at that office. There are three other individuals based at the office
- 30 although all of them work out of the office much of the time. The other director

of the appellant is primarily responsible for the running of two other hotels which are in Nottingham.

6. The appellant employs around 110 employees and a General Manager, Mr Anderson had day to day responsibility for the running of the hotel. Mr Johal speaks to Mr Anderson regularly for updates on the running of the hotel.
7. For some time the appellant has been in discussion with the respondent regarding complaints raised by a neighbour in relation to golf balls from the appellant hotel landing in his property. Those discussions were mainly between Mr Anderson and the respondent.
8. On 31 August 2022 the respondent attended at the appellant's hotel and spoke with Mr Anderson. He served an Improvement Notice on Mr Anderson, the terms of which he read out. He informed Mr Anderson that the Notice would also be sent to the appellant's registered office. Mr Anderson signed a docket entitled 'Certificate of delivery' and this document was also signed by the respondent and witnessed by one of the respondent's colleagues.
9. The Notice referred to the appellant's address as Sovereign House in Nottingham, but went on to refer to it as 'Trading as Gleddoch Golf and Spa Resort, Old Greenock Road, Langbank and made further reference to that address when setting out the basis on which the Improvement notice was being served. The notice set out the time limit for appeal and that a failure to comply with the notice could result in imprisonment.
10. A copy of the Improvement Notice was sent to the appellant's registered office by special delivery. There was an attempt to deliver the Notice on 2 September, but there was no one at the office to sign for the correspondence. As no one attended the delivery office to collect the correspondence, the notice was returned to the respondent on 21 September.
11. Mr Johal was on holiday and out of the office from 31 August until 19 September. Mr Johal first saw a copy of the Improvement Notice on 20 September on his return to his office. It is not known how the Notice arrived

at the office. Mr Johal discussed the matter with Mr Anderson and others on that day.

12. On 26 September, Mr Johal took legal advice on the terms of the Notice and on 30 September an appeal was submitted to the Employment Tribunal in that regard.

Submissions

13. Written submissions were provided on behalf of the appellant. Reference was made to **HSE v George Tancocks Garage (Exeter) [1993] Crim. L.R. 605** and **Marks & Spencer plc v Williams-Ryan [2005] EWCA Civ 470**. The appellant's position was that the delivery of the Improvement Notice on Mr Anderson at Gleddoch Spa did not constitute valid service as it was not at the registered or principal office of the appellant. Further the special delivery to the appellant's registered office was not successful. A copy of the notice was received at that office, although it is not known how it was received, on 20 September and therefore the 21 day period in which an appeal should be lodged, ought to run from that day.
14. The alternative position advanced was that it was not reasonably practicable for the appellant to lodge the appeal within the statutory time limit and it was lodged within a reasonable position thereafter.
15. The respondent's position was that section 46 is permissive and not mandatory in nature. Reference was made to a case involving environmental protection **Allen v Ealing Borough Council [2021] W.L.R. 3305**. It was said that there was no requirement that a notice should be left at a registered office. It was not disputed that the Notice was given the General Manager of the appellant and it was said he was in a position of authority and therefore the Notice was properly service in terms of section 46(2) of the Act on 31 August.
16. It was said that it was reasonably practicable for the appeal to have been lodged in time and reference was made to **London Borough of Wandsworth v Covent Garden Market Authority [2011] EWHC 1245 (QB)** and **Palmer & Saunders v Southend-on-Sea Borough Council [1984] W.L.R. 1129**. It

was said that the appellant was at fault for not having processes in place to deal with urgent matters while the principal director was on leave. It was also said that the appeal had not been lodged within a reasonable period. The appellant waited six days to seek legal advice when it should have been clear to them that there was a deadline in relation to an important legal matter.

Discussion and decision

What was the date of service of the Notice?

17. The Tribunal considered first whether there had been proper service of the Notice and if so, on what date. The relevant legislation is section 46 of the Act.

46.— Service of notices.

(1) Any notice required or authorised by any of the relevant statutory provisions to be served on or given to an inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.

(2) Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(3) Any such notice may—

(a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;

(b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.

(4) For the purposes of this section and of [section 7 of the Interpretation Act 1978]¹ (service of documents by post) in its application to this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that—

(a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;

(b) in the case of a partnership or a person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

5 (5) If the person to be served with or given any such notice has specified an address within the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and [section 7 of the Interpretation Act 1978]² as his proper address.

10 (6) Without prejudice to any other provision of this section, any such notice required or authorised to be served on or given to the owner or occupier of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible person who is or appears to be resident or employed in the premises.

15 (7) If the name or the address of any owner or occupier of premises on or to whom any such notice as aforesaid is to be served or given cannot after reasonable inquiry be ascertained, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of "owner" or "occupier" of the premises (describing them) to which the notice relates, and by delivering it to some responsible person who is or appears to be resident or employed in the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

20 (8) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

25 18. The Notice in this case was served on the appellant as employer and not as owner or occupier. That much is clear from the notice itself as it makes
30 reference to section 3(1) of the Act which states that "It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as it reasonably practicable, that person not in his employment who may be affected thereby are not thereby exposed to risks to heir health and safety."

35 19. The question then was whether service on Mr Anderson, who was not a director of the company at an address which was not the registered office of the appellant constituted proper service for the purposes of section 46.

40 20. In terms of section 7 Interpretation Act 1978 'References to service by post. Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is

deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.'

5 21. There are then two questions to be considered, was the service of the Notice on Mr Anderson valid service and/or was the sending of the Notice to the appellant's registered address valid service?

22. In relation to the first question, it is noted that the provisions of section 46 are permissive and not mandatory. It refers to 'may' not 'must'. The Tribunal had regard to the case of **Allen** referred to above in this regard, as although that was not a case in terms of the Act, the relevant legislative provisions were very similar. Therefore, there must be other methods of service not set out in that section. There was no suggestion made that Mr Anderson indicated that he was not capable of receiving service of this Notice. The discussions which had been ongoing regarding the matter had been between Mr Anderson and the respondent. There was no evidence that Mr Johal had been involved directly in discussions at all.

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23. The Notice was served in person at the property to which the Notice related. The registered office of the appellant was in England and there was no suggestion that there had been any correspondence with that office at all. While the respondent indicated that a copy of the Notice would also be sent to the registered office, there was no suggestion made that Mr Anderson should ignore the Notice until such times as it was received at that office, or that the Notice being served on Mr Anderson was somehow secondary to the Notice being sent to the registered office.

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24. It is clear that the Act, in common with the relevant legislation in **Allen** requires a Notice to be brought to the attention of a natural person who can take the required action. Mr Anderson was the general manager of the premises to which the Notice related. He had been in discussion with the respondent regarding the issue to which the Notice related. He did not decline to accept service of the Notice. He signed to acknowledge receipt of it. In these

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circumstances, the Tribunal concludes that valid service was effected by serving the Notice on Mr Anderson and that this took place on 31 August.

25. The Tribunal also considered whether there had been valid service on the appellant by virtue of the Notice being sent by special delivery to the appellant at its registered address. It seems curious to the Tribunal that had the letter been sent by normal post there may well be no dispute that there was valid service, but because the respondent took steps to ensure that the Notice was delivered and no one from the appellant picked up that Notice, that there could not be valid service of it. The appellant, in the form of Mr Anderson was aware that a Notice was to be sent to the registered office. If it were right that Notice had not been served because no one had been present when there was an attempt at delivery and no one took steps to retrieve the correspondence, then it would be possible for a company to seek to delay or avoid the implications of a notice by either refusing to sign for it or failing to pick it up from a post office. That cannot be right. It was extremely surprising to the Tribunal that an organisation such as the appellant, had an office from which a number of companies operated, but they had no method of ensuring the mail was dealt with timeously.

26. In these circumstances, the Tribunal concluded that there had been valid service of the Notice on 31 August, failing which 2 September.

Reasonable practicability

27. The Tribunal then went on to consider that as no appeal was lodged until 30 September, which would be either 7 or 9 days out of time, whether it had been reasonably practicable to submit an appeal in time.

28. The Tribunal took into account that whether something is reasonably practicable is a matter of fact for the Tribunal to determine. In determining the matter, the Tribunal was of the view that the following facts were particularly relevant:

i. There was no dispute that Mr Anderson was made aware of the Notice on 31 August.

- ii. There was no impediment to Mr Anderson informing Mr Johal of the Notice during his annual leave or contacting the other director of the company. It was not at all clear to the Tribunal why this was not done given the clear seriousness of the matter.
- 5 iii. There was no explanation as to why the Notice sent to the appellant's head office was not collected. The Tribunal was extremely surprised that there were no arrangements place to ensure that any mail sent to a registered office was dealt with timeously.
- 10 iv. When Mr Johal returned from leave, he did not consult solicitors for six days. It was suggested that Mr Johal would reasonably have believed that the period in which an appeal against the Notice could be made was 21 days from the date on which he read it. The Tribunal did not accept that was a reasonable position for him to adopt. The Notice was dated 31 August. It was clearly an important legal document.
- 15 Mr Johal's evidence was that he wanted to consider the options available and potential cost of an appeal before taking any further steps. That was a decision made by him which he was entitled to take, but the consequences of that delay were that the appeal was not lodged for an additional number of days.
- 20 v. The Tribunal accepted that once solicitors were instructed, the appeal was lodged within a further two days.
29. The Tribunal concluded that it was reasonably practicable for the appellant to have lodged the appeal within the required period. The appeal was lodged either 7 or 9 days late. The delay caused by Mr Johal considering the business implications of lodging an appeal resulted in the additional delay.
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30. Therefore for all these reasons, the Tribunal concluded that it was reasonably practicable for the appeal to have been lodged timeously. If it is wrong in that, then in any event, it is of the view that the further period taken to lodge the appeal was not reasonable. It was caused by Mr Johal considering whether or not he would pursue an appeal and there was no reason why he could not
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have taken advice on that matter as soon as he was aware of the terms of the Notice.

31. The Tribunal would also note that while it is aware of the terms of the judgment of the Court of Session in the case of **Petrofac Facilities Management Ltd v Evans [2021] CSIH 33**, no request was made to exercise the Tribunal's powers in terms of Rule 5, and in the particular circumstances, the Tribunal was not satisfied that it was appropriate to do so for the reasons set out above.

Employment Judge: Amanda Jones
10 Date of Judgment: 15 December 2022
Entered in register: 16 December 2022
and copied to parties