EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106930/2023

Held in Glasgow (by CVP) on 05 September 2024

Employment Judge B Beyzade

Mr. J Weldon	**Claimant** **Represented by:** **Mr. R Lawson, Solicitor**
GXO Logistics UK Limited	**Respondent** **Represented by:** **Mr. P Sands, Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The judgment of the Tribunal is that:

1.1. The respondent's application to file and serve an ET3 after the time limit for doing so, was allowed. The ET3 presented by the Respondent with the application shall be accepted by the Tribunal, as received on 30 May 2024.

1.2. A Preliminary Hearing shall be listed in private at the Glasgow Employment Tribunal by Cloud Video Platform before an Employment Judge for one hour for case management purposes.

REASONS

Introduction

1. The claimant presented complaints of unfair dismissal pursuant to sections 94 and 98 of the Employment Rights Act 1996 ("the ERA"), automatically unfair dismissal pursuant to section 152 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA"), and a claim that the claimant has been subjected to detriments in terms of section 146 of the TULRCA all of which the respondent denied in their draft Response sent to the Tribunal on 30 May 2024.

2. Prior to that date on 15 May 2024 the respondent's representative sent an email to the Tribunal advising that the respondent received correspondence from the Tribunal dated 10 May 2024, the respondent was unaware of the claimant's claim, they requested that the claim be re-served on them (if the claim had been previously served), and a request was made for 28 days to respond from the date of service.

3. A copy of the Notice of Claim and the Claim Form was enclosed with the Tribunal's correspondence sent to the respondent dated 28 May 2024. The respondent's representative was advised that if the respondent wished to defend the claim, they would have to submit an ET3 Response Form accompanied by an application for an extension of time to the Tribunal copied to the other party.

4. A written application and draft ET3 were sent from the respondent's representative to the Tribunal copied to the claimant's representative on 30 May 2024.

5. Correspondence was issued to parties dated 03 June 2024 acknowledging the respondent's representative's application dated 30 May 2024 advising that the Tribunal awaited comments from the claimant's representative on the application.

6. On the same date the Tribunal sent separate correspondence to the claimant's representative advising that Legal Officer F Paon directed that the claimant should provide the documents requested on 03 January 2024 within 14 days. The claimant's representative sent correspondence to the Tribunal dated 17 June 2024 requesting a short further extension of 14 days in order to provide the necessary documents.

7. The claimant's representative was sent a reminder by correspondence dated 11 June 2024 from the Tribunal that the claimant's comments on the respondent's application for an extension of time remained outstanding.

8. The claimant's representative lodged their objections to the respondent's application for an extension of time and their grounds in respect thereof by an email dated 17 June 2024.

9. The Legal Officer considered the respondent's application for an extension of time without a hearing and granted the respondent's application. The reasons for granting the application were set out in correspondence from the Tribunal dated 18 June 2024. The letter stated that as the decision has been made by a Legal Officer, any application for the decision to be considered afresh by an Employment Judge should be made within 14 days from the date of the Tribunal's correspondence being issued to parties.

10. An Acknowledgment of Response was issued to parties dated 18 June 2024.

11. By a letter dated 19 June 2024 parties were advised that following initial consideration, Employment Judge C McManus directed that the claim will now proceed to a Final Hearing and be heard in person at the Glasgow Employment Tribunal on dates to be determined, parties were requested to respond with their date listing stencils by 02 July 2024, and case management orders had been made and were enclosed therein.

12. By email dated 28 June 2024, the claimant's representative made an application for the Legal Officer's decision granting an extension of time for

the respondent to present their Response be considered afresh by an Employment Judge. In the grounds supporting the application it was stated that the decision was made without any material being before the Tribunal relating to why the respondent was not aware of the claim at an earlier stage given that correspondence appears to have been sent to the respondent by the Tribunal on five occasions (prior to the Tribunal's letter of 10 May 2024). It was asserted that the Legal Officer had ignored a relevant factor. In relation to the alleged discrepancy between the respondent's address on the ET1 Form and the registered address at Companies' House, it was contended that the address contained on the ET1 Form was correct and that according to the Royal Mail website the address "Building 19, Haymarket Square" did not exist. The claimant's representative also pointed out that the draft ET3 was presented five and a half months after the due date (13 December 2023), that the claimant may well be prejudiced by this delay, and that witnesses' memories could be adversely affected (and that this would not be the case if the matters before the Tribunal were limited to issues relating to quantum only).

13. By an email of the same date the respondent's representative sent their grounds of opposition to the claimant's application lodged earlier that day. The respondent's representative advised that the respondent's position was that it had not received any of the prior documentation in relation to the claim (and that it was not possible to prove that something had not been received), and further, that there was no documentation evidencing receipt of the claimant's claim as this had not been sent by recorded delivery or by email. It was also submitted that this was not a case in which where the evidence would be impacted by a delay of a few months, that the claim was solely based on the claimant's dismissal, and that there was clear and contemporaneous documentation that records all the internal procedures including the relevant meetings. It was asserted that this was not a claim in which reliance would be placed on witness testimony unsupported by documentation from within the file of documents.

14. By correspondence dated 01 July 2024 parties were advised that Employment Judge Hoey having considered parties' correspondences dated 28 June 2024 had directed that a hearing be listed by Cloud Video Platform ("CVP") for 2 hours in terms of Rule 20, it not being possible in this case to determine the application without a hearing given the submissions from both parties.

15. Notice of Hearing was issued to parties on the same date advising that a Preliminary Hearing will be held on 05 September 2024 at 10.00am for 2 hours to determine if the ET3 Response should be accepted late.

16. The claimant's representative filed an electronic file of documents for the Preliminary Hearing by email sent to the Tribunal copied to the respondent's representative on 02 September 2024 at 5.49pm. The file of documents consisted of some 69 pages, to which reference was made by parties' representatives during today's hearing.

17. Accordingly, the case called for Preliminary Hearing before me today, 05 September 2024, at 10.00am at the Glasglow Employment Tribunal by CVP.

18. The claimant was represented by Mr Ruaraidh Lawson, Solicitor and the respondent was represented by Mr Paul Sands, a solicitor.

19. The Employment Judge apologises to parties for the delay and any inconvenience caused. This is due to a number of reasons including annual leave, training, sitting commitments and other judicial commitments.

Parties' submissions

20. Both parties' representatives made oral submissions during the hearing which the Tribunal found informative.

<u>Submissions on behalf of the respondent in summary</u>

21. The respondent's representative submitted that the claimant's objection to the respondent's application for an extension of time to file their Response is based on the respondent's failure to present a valid or reasonable argument

for the delay. The respondent's representative acknowledged that they have little ability to shed too much light in terms of the reason for the late Response. It was submitted that the reason for the delay was simply that the respondent did not receive the Notice of Claim that had been sent to them by the Employment Tribunal. He stated that the respondent were unaware of the reason for this.

22. It was submitted on behalf of the respondent that whilst the delay in filing a response in relation to the original Notice of Claim is clearly significant (in terms of the passage of some 5.5 months), the respondent acted exceptionally quickly following receipt of the ET1 on 28 May 2024.

23. This respondent instructed solicitors and the draft ET3 was filed on 30 May 2024. It was explained that the respondent had made enquiries in relation to the delay in receiving correspondence from the Tribunal and that the respondent's correspondence address was a "PO Box address". The respondent's representative advised that this was the respondent's registered address, not their actual address and that none of the respondent's employees were located at that address. Correspondences should be forwarded to the respondent at their head office in Northampton. However, that clearly did not happen. Following enquiries with the office maintaining the correspondence address made by the respondent, they were advised (by the security company which controls the Edinburgh office) that the correspondences from the Tribunal in question had not been received. He is not aware of the specific terms of any enquiries made to specific individuals within the Edinburgh office in terms of what went wrong with receiving and forwarding their post. Accordingly, the respondent did not receive the Tribunal's correspondences that were sent prior to 28 May 2024. Thereafter they quickly made enquiries and the effort turned to trying to obtain documents from the Tribunal.

24. It was submitted that the respondent had a legitimate reason for the delay, that there was no attempt to delay the process by the respondent. and further, that the respondent would have nothing to gain by doing so (and in turn by prejudicing their own position).In any event it was submitted that whatever the cause of the delay it is clearly an innocent error that happened somewhere along the postal service which caused claim not to be received by the respondent.

25. It is contended on behalf of the respondent that it is very clear on the face of the pleadings, and even based on the claimant's ET1 that the respondent has at the very least an arguable case (in fact the respondent submits that they had a very strong defence to this particular case). The respondent's position is that this is a clear misconduct case where there is an arguable case for the

respondent, and that any claims in respect of detriments for carrying out trade union activities (unless any such detriment is dismissal or acts that occurred a day before the claimant's dismissal), anything that was purported to be a detriment that occurred prior to 29 May 2023 (taking account of ACAS Early Conciliation), is also going to be subject to jurisdictional issues on basis of time bar issues.

26. The respondent's representative argues that the balance of prejudice significantly weighed in favour of the respondent if the ET3 were rejected compared to the prejudice that will be suffered by the claimant if the Response were accepted. If the Response was accepted, the claimant will still be able to pursue their claim and it is possible to have a fair hearing at a Final Hearing that is yet to be listed. Whilst there are arguments around memories of witnesses fading and the proceedings are delayed by some 5.5 months, whilst claims tend to progress more quickly at Glasgow Employment Tribunal, it is very common for Employment Tribunal cases generally to take in excess of one year to be listed for a Final Hearing. In those circumstances it is never the case that arguments around any inability to have a fair trial are raised. The respondent believes that the facts and circumstances relating to this case are relatively straightforward and that the witness evidence and any arguments and submissions made are likely to be supported by contemporaneous documents. It is therefore submitted by the respondent's representative that it is unlikely that fading witness memories is a valid argument in terms of any threat to the ability to have a fair trial.

27. In concluding, the respondent's representative stated that, on balance, it would be in accordance with the Tribunal's overriding objective and it would be an error not to grant respondent's application for an extension of time. It was stated that dealing with cases fairly and justly including ensuring that parties are on an equal footing and dealing with cases flexibly and managing them appropriately.

<u>Submissions on behalf of the claimant in summary</u>

28. The claimant's representative advised that if the respondent's assertions in the draft ET3 are accepted, they did not dispute that there was potential merit in terms of the respondent's defence of the claim. The claimant's representative reminded the Tribunal that the merits was just one factor to be taken into account along with the other circumstances.

29. It was submitted that if it is the case that the respondent did not receive correspondence, given the apparent merits of the defence, it was difficult to

argue other than that the application for an extension of time should be granted. If the respondent were not being honest, however, that was a factor heavily in favour of rejecting the application. The Tribunal were invited by the claimant's representative to focus upon the non-receipt of the Claim Form (and not just the Claim Form but 4 additional documents sent by the Tribunal that were copied to the respondent at their registered office). Those correspondences that were copied to the respondent were dated 03 January 2024 (see page 37), 31 January 2024 (see page 39), 27 February 2024 (see page 42), and 07 March 2024 (see page 44). The correspondence from the Tribunal dated 10 May 2024 was ultimately received by the respondent, which can be seen from the fact that the initial correspondence from the respondent to the Tribunal was sent on 15 May 2024.

30. The Tribunal sent the Claim Form by email on 28 May 2024 to the respondent's representative. The respondent submitted its application and draft Response on 30 May 2024. Extracts from Royal Mail within the file of documents for this hearing show that there is no Building 19 on the street in question.

31. It is therefore submitted that on the balance of probabilities it seems very unlikely that the respondent did not receive five or six letters which were sent to the correct registered office address of the respondent. Rule 90 of the ET Rules provides a presumption that in the circumstances the mail sent was received by the addressee (unless that presumption is rebutted by the respondent).

32. The claimant's representative expected the Tribunal to have heard evidence about the way that the respondent handled incoming mail. The claimant's position is that there simply is not sufficient explanation before the Tribunal. Whilst it is not submitted that the respondent's conduct was deliberate, it is submitted that it is reckless for a company not to be receiving mail sent to their registered office with this degree of regularity.

33. Furthermore, it is submitted on behalf of the claimant that the claimant is prejudiced by the delay and that will be in respect of witness' memories in particular. It is acknowledged that the respondent says that there are contemporaneous documents that will assist with witnesses' recollections, but the claimant says that that assertion is not well founded. The substance of the claimant's case is that he was ambushed by the respondent's managers to take a drugs and alcohol test and that they had no reasonable suspicion (that entitled them to require the claimant to take a test at the time). It is the claimant's position that they were targeting him and goading him into refusing to undertake a test.

34. In those circumstances, the claimant says that the truth of that comes down to a matter of credibility. The ease with which witnesses are likely to claim that they do not recall events is likely to make Tribunal's task of assessing events more difficult. It was submitted that the evidential burden is on the claimant to establish the reason for his treatment.

35. This point was explored further with the claimant's representative and it was thereafter submitted that the evidential burden depended on the nature of the claim, namely whether the claim related to detriments or automatically unfair dismissal. The claimant's representative submitted that there is some evidential burden on the claimant in the circumstances and that the claimant is prejudiced by the effect of any delay in terms of deterioration of witnesses' memories.

36. It was further submitted on behalf of the claimant that even if the Response were rejected, the claimant also needed to persuade the Tribunal that an award would need to be made in his favour (and the Tribunal would require to hear evidence form the claimant relating to this matter). It was submitted that it would be open to the Tribunal to allow the respondent's representative to make representations in writing or to participate in the Hearing under Rule 21(3) of the ET Rules. The respondent could be permitted to participate in a Remedy Hearing.

37. In conclusion, the claimant's representative submitted that notwithstanding any possible grounds of resistance to the claimant's claim and any merits of the same, and the relative prejudice to parties, in the absence of any satisfactory reason for the delay in presenting a Response, the respondent's application should be refused.

Submissions in reply by respondent's representative

38. The respondent's representative in their submissions in reply reminded the Tribunal that the lack of an explanation for any delay is not (and cannot be) the sole reason for rejecting the respondent's application, and further that, due consideration had to be given to the merits of the draft Response and the balance of prejudice.

The Law

39. Rule 2 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules") provides:

"2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

40. Rule 20 of the ET Rules states:

"20.—(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, except where the time limit has not yet expired, 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.
(3) An Employment Judge may determine the application without a hearing.
(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside."

41. Parties' representatives referred to the following cases during the hearing:

a) Kwik Save Stores Ltd v Swain [1997] 1 ICR 49 EAT

In the Kwik Save decision, the EAT held that "The process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice". The case established that an Employment Judge should always consider the following three factors. First, the explanation supporting an application for an extension of time. The more serious the delay, the more important it is that the Employment Judge is satisfied that the explanation is honest and satisfactory. Secondly, the merits of the defence. Justice will often favour an extension being granted where the defence is shown to have some merit. Thirdly, the balance of prejudice. If the employer's request for an extension of time was refused, would it suffer greater prejudice than the employee would if the request was granted? If the likely prejudice to the applicant for an extension outweighs the likely prejudice to the other party, then that is a factor in favour in granting the extension of time, but it is not always decisive. There may be countervailing factors."

Reference was also made to page 53a of the Judgment: "In such cases it is incumbent on the applicant for an extension of time to place all relevant documentary and other factual material before the industrial tribunal in

order to explain (a) non-compliance with the Rules and (b) the basis on which it is sought to defend the case on the merits."

b) Thornton v Jones UKEAT/0068/11/SM

"The Tribunal is entitled to exercise a broad general discretion in the interests of justice: this is not, therefore, a case where restrictive rules are applied, such as are applied in this Tribunal in extending time for the lodging of a Notice of Appeal. The Respondent's explanation for his failure to lodge a response in time will always be relevant. If the failure represents some kind of procedural abuse or intentional default, that will obviously weigh heavily against the grant of an extension."

42. The guidance in Kwik Save was approved by reference to the ET Rules in Office Equipment Systems Ltd v Hughes UKEAT 0183/16/JOJ.

43. In addition, the Tribunal considered the decision and parties were referred to the decision in Grant v ASDA Stores [2017] ICR DI 7, where Simler J referred to the earlier case of Kwik Save v Swain [1997] 1 ICR 49 EAT, which gave guidance on the approach to be adopted by Tribunals in exercising their discretion in an application for an extension of time under the ET Rules (in that case the 1993 version). Mummery J gave the following guidance at pages 54 to 55:

"The discretionary factors; The explanation for the delay which has necessitated the application for an extension is always an important factor in the exercise of the discretion. An applicant for an extension of time should explain why he has not complied with the time limits. The tribunal is entitled to take into account the nature of the explanation and to form a view about it. The tribunal may form the view that it is a case of procedural abuse, questionable tactics, even, in some cases, intentional default in other cases it may form the view that the delay is the result of a genuine misunderstanding or an accidental or understandable oversight. In each case it is for the tribunal to decide what weight to give to this factor in the exercise of the discretion. In general, the more serious the delay, the more important it is for an applicant

for an extension of time to provide a satisfactory explanation which is full, as well as honest. In some cases, the explanation, or lack of it, may be a decisive factor in the exercise of the discretion, but it is important to note that it is not the only factor to be considered. The process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice. An important part of exercising this discretion is to ask these questions: what prejudice will the applicant for an extension of time suffer if the extension is refused? What prejudice will the other party suffer is the extension is granted? If the likely prejudice to the applicant for an extension outweighs the likely prejudice to the other party, then that is a factor in favour in granting the extension of time, but it is not always decisive. There may be countervailing factors. It is this process of judgment that often renders the exercise of a discretion more difficult than the process of finding facts in dispute and applying them to a rule of law not tempered by discretion."

Discussion and Decision

44. The Tribunal took into account the timing of the claimant's claim, the procedure since the presentation of the claimant's claim, the content of the respondent's draft ET3 and their application for an extension of time, and all the correspondences and parties' representatives' submissions, and concluded that the balance of prejudice of granting the extension of time sought lies in favour of the respondent.

45. The ET1 Form was issued along with a Notice of Claim to the respondent's registered office address. The respondent's representative confirmed that the address on the claimant's ET1 Form was the correct address. The Tribunal sent the notification of the claim to the respondent on 15 November 2023 and the Response was due by 13 December 2023. Although the respondent did not call any witnesses, Mr Sands advised on behalf of the respondent, that the respondent had not received the Notice of Claim. He stated that the

respondent were using a PO Box address at its registered office (where none of the respondent's employees are present) and the external security company they use to forward their mail had advised that the Notice of claim was not received. There is no evidence to suggest this information is false or mistaken. It cannot be known where or why the notification was not received. There was no evidence given in terms of any internal or external steps taken to investigate any issues with the respondent's mail. Whilst I note the claimant's representative suggestion that in the circumstances and in circumstances in which five previous correspondences from the Tribunal were apparently not received by the respondent prior to 10 May 2024 (and the respondent had not shown what steps they had taken to investigate this matter), I cannot be satisfied in terms of Rule 90 of the ET Rules that the respondent has shown that the Notice of Claim was not delivered, however, notwithstanding any concerns that this gives rise to, I also take into account that this is one factor that I am required to consider along with all the other circumstances in exercising my discretion.

46. When I enquired with Mr Lawson which of the categories identified by the then Mummery J in Grant v Asda Stores this case fell within namely "…procedural abuse, questionable tactics, even, in some cases, intentional default in other cases it may form the view that the delay is the result of a genuine misunderstanding or an accidental or understandable oversight", he indicated that none of these categorisations were appropriate in this case. He acknowledged it would be going one step too far to suggest that there was a deliberate element. In his submission, given that there were five or six items of correspondence from the Tribunal prior to 10 May 2024 that were apparently not received by the respondent, it was reckless for a company not to be receiving mail sent to its registered office with that degree of regularity. Mr Lawson said that the respondent had to produce material to show it had not received the Notice of Claim and they had not done so.

47. The respondent's representative maintained that the respondent was not aware that a claim had been issued in the Employment Tribunal until they

received the Tribunal 's correspondence sent to parties dated 10 May 2024. At that point it is submitted that the respondent acted swiftly and without delay to notify the Tribunal of the problem and of their interest in the case. The claimant's representative did not seek to argue that the respondent had not acted expeditiously following receipt of the Tribunal's correspondence dated 10 May 2024.

48. I also considered the merits factor in terms of another matter to be taken into account in deciding whether to grant an extension of time. The respondent avers that the claimant was dismissed due to gross misconduct, the respondent having formed a reasonable belief that the claimant had failed to provide a sample for a drugs and alcohol test. The respondent contends that this decision was reached having carried out a reasonable investigation and a fair process that included a first instance disciplinary and an appeal process. The respondent's representative advised that there is documentary evidence that will support the respondent's averments at a Final Hearing. I am satisfied that the respondent's Response and the contents thereof are properly and reasonably arguable.

49. I took account the comments in the authorities (such as Kwik Save v Swain) on the merits factor and in terms that if a defence is shown to have some merit, justice will often favour granting an extension of time, since there will otherwise never be a Final Hearing of the merits of the case. The claimant's representative said that if a Rule 21 Judgment were granted and the respondent's application for an extension of time were refused, the Tribunal could still permit the respondent to participate in any Final Hearing in respect of remedy. I took into account that in terms of Rule 21 of the ET Rules any participation by the respondent would be limited to the issues relating to remedy and the extent of their participation would be subject to the Tribunal's discretion.

50. The claimant's representative referred to the delay of five and a half months that had occurred as a result of the respondent filing their draft Response and

application on 30 May 2024. Although the respondent's representative filed their draft Response and application on 30 May 2024, it is clear from the above chronology that the claimant's representative did not file their objections until sometime after (and following reminders being sent by the Tribunal). The claimant's representative argued that the delay to the Final Hearing may have an impact on witness recollections. I considered this contention against the respondent's submission that there are contemporaneous documents to which their witnesses (it is intended that the respondent will call four witnesses, including in particular, the person who subjected the claimant to testing, the investigation officer, the disciplinary officer and the appeal officer) will refer in their evidence including notes of the Disciplinary Hearing (which I am advised the claimant was in possession of) and that the respondent also had in their possession a written record of the Appeal Hearing.

51. The claimant's representative indicated that they will be calling the claimant and his union representative (who will speak to the process that took place prior to the Disciplinary Hearing, events at the Disciplinary Hearing and the Appeal Hearing) to give oral evidence. Although I was not told about any specific issues that they may encounter in terms of their recollection, I took into consideration that there will be contemporaneous documents to which they will be able to refer which may assist in terms of their recollection.

52. The claimant's representative had not yet provided the claimant's Schedule of Loss and there was outstanding information from the claimant that he was requested to send to the Tribunal several months ago, that had not been provided. A Rule 21 Judgment could not be issued in the circumstances.

53. In addition, the respondent's representative pointed out that the claimant's particulars of claim in respect of the complaint that the claimant has been subjected to detriments in terms of section of 146 of the TULRCA were not clear from the Grounds of Complaint. At today's hearing the claimant's representative indicated that the detriments relied on by the claimant were those set out at paragraphs 16a to h of the Grounds of Complaint. The

respondent's representative contended that it was not clear how some of these such as the alleged detriment at paragraph 16b. was said to amount to a detriment, and he intimated that further specification could be required.

54. The Tribunal considered the balance of prejudice in this matter and concluded that whilst the claimant would not now succeed on a 'default judgment' basis, it would still be open to him to prove his case at a later date. If the respondent were precluded from participating, they may stand to have Judgment against them in relation to serious matters. The Tribunal considered that the overriding objective (Rule 2 of the ET Rules) and interests of justice meant that an extension should be allowed and the ET3 accepted.

Further case management

55. The Tribunal proceeded to consider the remainder of the Preliminary Hearing. At the conclusion of the Hearing parties were advised that if the respondent's application succeeded, on the basis that there may be issues relating to specification and witness availability, the Tribunal would determine it was necessary to list a further Preliminary Hearing on the first open date after 28 days in order to consider case management issues and further applications parties may wish to make. Accordingly, I direct the Clerk to the Tribunal to list a further Preliminary Hearing for one hour at the Glasgow Tribunal Centre by Cloud Video Platform before an Employment Judge for case management purposes. By not later than seven days before the Preliminary Hearing, parties are directed to liaise and to intimate and lodge with the Tribunal (in electronic form) a Joint File comprising the pleadings, the Tribunal's orders, copies of any applications, a joint list of issues, joint proposed directions, a draft trial timetable, together with a schedule of parties' dates of availability for Final Hearing. At the same time parties may (if they so wish) jointly lodge an application for the Preliminary Hearing to be vacated (cancelled), and thereafter any such application will be referred to an Employment Judge for directions.

B. Beyzade
Employment Judge

04 November 2024

Date of Judgment

Date sent to parties 06 November 2024

I confirm that this is my Judgment in the case of 4106930/2023 Mr John Weldon v GXO Logistics UK Limited and that I have signed the Judgment by electronic signature.