



EMPLOYMENT TRIBUNALS

Claimant
Mr H Arif

v

Respondent
Delivery in Motion Limited

JUDGMENT

1. The respondent's application for an extension of time to present its response is refused.
2. The Tribunal's Judgment under rule 21 of the Employment Tribunals Rules of Procedure 2013 sent to the parties on 21 July 2017 stands.

REASONS

1. The claimant, Mr Arif, presented this claim for unpaid wages to the Tribunal on 21 February 2017.
2. The claim was sent by the Tribunal to the respondent, Delivery in Motion Limited, at its address in the claim form, Acre House, 11–15 William Road, London NW1 3ER, on 2 March 2017. No response was received to the claim by the due date of 30 March 2017 nor were the Tribunal papers returned undelivered.
3. On 5 April 2017, Employment Judge Brain directed that the claim be reserved on the respondent at its registered office, 325-331 High Road, Ilford, IG1 1NR. This was the address of a firm of accountants. Again, no response was received to the claim by the due date of 3 May 2017 nor were the Tribunal papers returned undelivered.
4. On 30 May 2017, some four weeks after the date for return of the response and just over a week before the claim was due to be heard at the Leeds Employment Tribunal on 7 June 2017, Mr D Miya wrote to the Tribunal asking for copies of all correspondence, including the Tribunal response form to be sent to him. He said that he had not received any paperwork relating to the matter which had been brought to his attention in the last 48 hours. He did not say how the matter had come to his attention.
5. Two days later, on 1 June 2017, a firm of employment consultants, Avensure Limited, wrote to the Tribunal to say that they had been instructed to act for the respondent. On 2 June 2017 the Tribunal sent copies of the claim form and accompanying documents to Mr Miya and to Avensure Limited with a direction from Employment Judge Burton that if the respondent wished to defend the

claim, they should submit a completed response form with an application to the Tribunal to extend time.

6. No response was received from the respondent or its representatives. On 21 June 2017 the Tribunal wrote to the claimant asking for further information about the amounts claimed in the claim form. He responded on 3 July 2017 and on 21 July 2017 I signed a Judgment under rule 21 of the Employment Tribunals Rules of Procedure 2013 in default of response.

7. On the same day, 21 July 2017, but at 5:00pm after the Tribunal had sent out the rule 21 Judgment, the respondent's representatives, Avensure, made an application for an extension of time for the response, accompanied by a draft of the proposed response. Their application was in the following terms:

"please find attached the ET3 in this case. As you are aware from earlier correspondent our client did not receive the initial documentation and it had to be resent. It has taken longer than anticipated to tease out the information for the ET3, but this is now attached and our client has a full defence to the claim.

We apply for the reasons above and previously explained for an extension of time for the ET3 to be accepted."

8. The proposed response set out the grounds of resistance in brief terms, to the effect that the claimant had been given notice of termination of his employment to expire on 31 October 2016, and therefore he had no entitlement to be paid for the two weeks after that date, as asserted in the claim form, and he had also been paid his expenses.

9. The respondent's application for an extension of time is made under rule 20 of the Employment Tribunals Rules of Procedure 2013, which provides as follows:

"20 applications for extensions 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, 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 it 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."

10. The respondent has not requested a hearing in its application. The claimant has responded to the application by way of an email dated 26 July 2017 in the following terms:

"What happens now? Delivery in Motion are clearly lying as I have emails and message after 31/10/16 in respect to working and booking appointments.

Can you please advise what the next step is? I believe these are just delay tactics used by them."

11. I have decided that the respondent's application for an extension of time should be refused. My reasons are as follows.

12. The Tribunal properly served the papers on the respondent at the address provided for it by the claimant in March 2017. The papers were then reserved

on the respondent at its registered office in May 2017. On neither occasion were the papers returned to the Tribunal undelivered. It is extremely unlikely that two sets of papers, sent by the Tribunal to different addresses, were not received and Mr Miya did not explain in his letter of 30 May 2017 why the papers had only just come to his attention.

13. By 1 June 2017 the respondent had instructed professional representatives, Aventure Limited. They were aware that the time to respond to the claim had passed and they were advised by the Tribunal what action needed to be taken if the respondent wished to contest the claim. Even then, it was not until 21 July 2017, some 7 weeks later, that Aventure provided a draft response to the claim. The reason given by Aventure for the delay is simply inadequate. It is impossible to understand how it could reasonably have taken 7 weeks to provide the very basic information set out in the draft response.
14. All of this is relevant of the respondent ignoring the claim and from early June 2017, failing to deal with it with any kind of reasonable expedition. If I refuse the respondent's application, the rule 21 Judgment will stand and the respondent will be unable to defend the claim but my conclusion is that the way in which the respondent has failed to engage with the claim in any kind of proper way means that I should exercise my discretion not to extend the time to respond to the claim.
15. In these circumstances, the respondent's application is refused and the existing rule 21 Judgment will stand.

Regional Employment Judge Robertson

Date: 4 August 2017