



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr D Denton  
Mrs L Denton  
Mr A Gilligan  
Miss N J Laws  
Miss M Toolan

**Respondent:** Govdata Limited

**HELD AT:** Liverpool **ON:** 26 June 2017

**BEFORE:** Employment Judge T Vincent Ryan

## REPRESENTATION:

**Claimants:** Absent – attendance excused  
**Respondent:** Mr A Lord, Consultant

**JUDGMENT ON PRELIMINARY HEARING** having been sent to the parties on 6 July 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### 1. The Issues

The issue to be determined was whether an extension of time ought to be permitted for the presentation of the respondent's response to the Employment Tribunal to the claimants' claims and so whether that response, or those responses, ought to be accepted.

### 2. Chronology

The following chronology is evident from the Tribunal's file of papers and is consistent with the respondent's submissions in support of its application for an extension of time for the presentation of its response:

- 2.1 22/11/2016 – The claimants presented their claims to the Tribunal having completed the early conciliation procedure.
- 2.2 24/11/2016 – The Employment Tribunal issued a Notice of Claim requiring a response by 22 December 2016 and notifying the parties that the matter was listed for hearing on 17 January 2017.
- 2.3 20/12/2016 – The respondent applied for an extension of time for the presentation of its response from a date no later than 22 December 2016 to at earliest 20 January 2016 [sic] "or later if possible". The reason for the application for an extension of time was a combination of the respondent's Christmas closure from 23 December 2016 to 4 January 2017 and subsequent holidays to be taken by directors of the respondent company.
- 2.4 23/12/2016 – The Tribunal notified the respondent that an extension of time for the presentation of the response had been granted but only to 13 January 2017 (Friday).
- 2.5 17/01/2017 (Tuesday) – The final hearing set for this date was postponed.
- 2.6 17/01/2017 (Tuesday) – The respondent presented its ET3 response form.
- 2.7 24/01/2017 – The Tribunal wrote to the parties confirming that the respondent's response had been rejected on the ground that it was received after the end of the extension of time previously given and it was not accompanied by and did not include a further application to extend time.
- 2.8 26/01/2017 – On advice the respondent wrote to the Tribunal with a retrospective application for an extension of time for the presentation of its response to the date of actual presentation, being 17 January 2017.
- 2.9 30/01/2017 – The claimants wrote to the Tribunal objecting to the respondent's application.
- 2.10 01/02/2017-26/06/2017 – During this period the Tribunal raised questions of the respondent concerning the delay in presentation of the ET3 response and there was both inter party and party to Tribunal correspondence with the respondent's explanations and submissions and the claimants' responses and objections to any reconsideration of the decision to reject the respondent's ET3.
- 2.11 26/06/2017 – Preliminary hearing on the respondent's application for acceptance of its ET3 response.

**3. The respondent's application at the preliminary hearing (confirming earlier correspondence)**

- 3.1 The respondent's directors were absent from work during the Christmas closure and a subsequent holiday abroad without direct and automatic access via their smart phones to email related to work. The tribunal's confirmation of extension of time will have been received at the respondent's offices during the shut down period. There was then a period of illness on the directors' return from holiday such that they did not attend their offices immediately upon return and were unaware that the Tribunal had extended the time for the presentation of the response only to 13 January 2017 and not in accordance with the application that had been made (to a date no sooner than 20 January 2017 but later if possible).
- 3.2 The respondent then contacted a member of their staff to check the date when they were required to do something for the Tribunal and the staff member informed them that the correspondence showed 17 January 2017 as being the key date. This was said to have been a misunderstanding in that the staff member had misunderstood the enquiry or misread Tribunal documentation giving 17 January 2017 as the key date, being the date of the listed final hearing. The enquiry had been about the date of the extension of time. The directors erroneously worked towards presentation of the respondent's ET3 by no later than midnight on 17 January 2017. The ET3 was presented by that time on 17 January 2017. The respondent indicated an intention to defend the claimants' claims and set out facts upon which it intended to rely in order to defend the claims.
- 3.3 The directors were unaware that presentation was later than the granted extension of time until they received from the Tribunal rejection of the response by a letter dated 24 January 2017. In the light of that the respondent applied for a retrospective extension of time and corresponded with the Tribunal in preparation for this preliminary hearing and in response to the claimant's objections.
- 3.4 If the respondent had presented its ET3 response at 23:59 on Friday 13 January 2017 this problem would not have arisen and the claimant could not have objected; nothing further would have taken place with regard to the processing of the response form until Monday 16 January 2017 whereupon it would have been processed by the Tribunal and a copy sent to the claimants. It follows that presentation on 17 January 2017, therefore, meant at most a one day delay in the processing of the response and no prejudice whatsoever to the claimants. The default was due to an error by a member of staff which was not deliberate and from the moment the error was detected the respondent has diligently pursued correspondence in an attempt to rectify the situation.

#### **4. Claimants' objections to the acceptance of late ET3 response form**

The claimants have objected consistently to the respondent's applications and wish the decision to reject the response to stand for the following reasons:

- 4.1 The ET3 presented by the respondent is brief and should not have taken two months to prepare.
- 4.2 The respondent's directors could have checked emails and prepared the ET3 from home via remote access and in time.
- 4.3 It is noted that although the directors say they were ill following their holiday they were clearly well enough to instruct legal advisers on the presentation of an ET3.
- 4.4 The respondent has failed to provide evidence of ill health.
- 4.5 It was "improbable" that the directors did not check their emails for a four week period in December 2016/January 2017.
- 4.6 Allowing the late presentation of the ET3 would cause undue prejudice to the claimant.
- 4.7 Rejection of the ET3 response would be in accordance with the overriding objective of the Tribunal.

#### **5. The Law**

- 5.1 The applicable law is contained in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and the Employment Tribunals set out in Schedule 1 to those Regulations. All further references to rules are references to these Rules.
- 5.2 Rules 15-22 concern the response to a claim.
- 5.3 Rule 15 provides that, otherwise than in a situation where the claim is rejected, the tribunal shall send a copy of the claim form, together with a prescribed response form, to a respondent with information which amongst other things explains how to submit a response and the time limit for doing so, together with confirmation of what would happen if a response is not received within that time limit. The notice sets out the date for compliance.
- 5.4 Rule 16 concerns the response form and the requirement to use the prescribed form which shall be presented to the Tribunal Office within 28 days of the date that the copy of the claim form was sent to a respondent by the Tribunal.
- 5.5 Rules 17 and 18 concern rejection of a response, where rule 17 relates to the failure to use the prescribed form or to supply minimum information, and rule 18 relates to late presentation. Rule 18 provides that a response

“shall be rejected” if received outside the time limit in rule 16, “or any extension of that limit granted within the original limit unless an application for extension has already been made under rule 20 or the response includes or is accompanied by such an application (in which case the response shall not be rejected pending the outcome of the application)”. If a claim is rejected under rule 18 the respondent will receive a notice of rejection explaining that the response was presented late, and how the respondent can apply for an extension of time and how to apply for reconsideration.

- 5.6 Rule 19, reconsideration of rejection, states a respondent whose response has been rejected under rules 17 or 18 may apply for reconsideration but only on the basis that the decision to reject was wrong or, in the case of a rejection under rule 17 (which is not relevant to this case) on the basis that the notified defect can be rectified. Rule 19 sets out the requirements for an application for reconsideration and the procedure.
- 5.7 Rule 20, application for extension of time for presenting response, states a reasoned application for an extension must be presented in writing and copied to the claimant. If the time limit for presentation of the response has expired then it must be accompanied by a draft of the response but otherwise it need not be so accompanied. The claimant has seven days within which to oppose the application if applicable.
- 5.8 Rules 21 and 22 concern the effect of non-presentation or rejection of a response or where the case is not contested, and the issuing of notification of acceptance.
- 5.9 Rule 5, extending or shortening time, states that the Tribunal may on its own initiative or on the application of a party extend or shorten any time limit specified in these Rules or in any decision whether or not (in the case of an extension) it has expired.
- 5.10 Rule 6, irregularities and non compliance, states that subject to four stated exceptions in respect of provisions in the Rules, and two stated exceptions in respect of a Tribunal order, a failure to comply or an irregularity in compliance will not of itself render void the proceedings or any step taken in the proceedings. The Tribunal may take such action as it considers just where there has been non-compliance save in those excepted instances, such as by waiving or varying the requirement or by way of strike out, barring, restricting or awarding costs in specified circumstances. The excepted rules include for our purposes rule 16(1), which provides as above that the response shall be presented within 28 days of the date that the copy of the claim was sent to the Tribunal. The other exceptions set out in rule 6 do not apply to these circumstances under consideration.

## **6. My considerations**

- 6.1 I considered all of the above, the chronology of events, the applicable rules, the respondent's submission and application, and the claimant's objections to it. I bore in mind the overriding objective of the Tribunal to deal with cases fairly and justly, and doing so insofar as practicable in line with the factors set out in rule 2. I considered the reason for the respondent's delay, its actions generally, the extent of the delay and likely effect thereof, if any, and in the light of all of that the relative prejudice or lack thereof visited upon the claimant and/or the respondent depending on which way I decided the respondent's application to extend time.
- 6.2 I concluded that there was, on the respondent's part, an unfortunate coincidence of an extension of time for the presentation of the response that was one week shorter than the minimum time for which it had applied in circumstances where notification of that decision will have been received by the respondent during the Christmas shut down period, holidays within the respondent's business and thereafter of the directors who were to take action with regard to the Tribunal proceedings, illness of at least one of the two directors who were instrumental in responding to the claimants' claims, and erroneous information mistakenly given to the directors on an appropriate enquiry when they were told that the key date for action in the Tribunal was 17 January 2017 when in fact that was the date of the listed final hearing which had been postponed. The respondent had made an effort initially to apply to the Tribunal for an extension of time to present its response and appeared to be acting in good faith and in accordance with the Rules in giving itself an opportunity to respond appropriately; similarly the directors checked on the information and upon being told (erroneously) that the ET3 response was to be submitted to the Tribunal by 17 January 2017, the directors ensured that they did so.
- 6.3 The delay for practical purposes was minimal in that in effect probably only Monday 16 January 2017 could have been considered a wasted day or a day on which there was no action taken had the respondent complied with the requirement to present by no later than Friday 13 January 2017. The reason for the delay was understandable and can reasonably be excusable. The claimants were not prejudiced by the delay between 13 and 17 January 2017 other than they have been deprived of a windfall by way of a technical victory. The claimants can still argue their cases as they had always intended to, and the strength of their evidence is not diminished by the want of the Tribunal having the capacity to deal with the ET3 response on Monday 16 January 2017. The respondent, on the other hand, would have to face judgment in respect of multiple claimants in the event that the extension of time is not granted to 17 January 2017.

## **7. Conclusion**

- 7.1 I consider that the overriding objective of the Tribunal, in the light of all of the above, is served by my acting justly in permitting an extension of time

for the presentation of the respondent's ET3 response to 17 January 2017 and allowing the respondent's application for reconsideration and acceptance of its response.

- 7.2 I am granting an extension of time in respect of the date set and decision made under rule 20 to grant an extension of time for the presentation of the response. The respondent's initial application for an extension was within the original time limit and therefore any response presented before the extended time limit of 13 January 2017 would have been accepted and not rejected by virtue of rule 18. The rule 20 application for extension was granted thus dis-applying the rule 16 requirement for presentation within 28 days of the date that the copy of the claim was sent by the Tribunal.
- 7.3 Rule 5 allows me to extend or shorten any time limit specified in any decision whether or not (in the case of an extension) it has expired and the expression "in any decision" may relate to a decision upon an application for an extension of time for presenting a response made under rule 20. Following that reasoning I may make any decision that I consider to be just (rule 6).
- 7.4 Whereas the power to extend time and to allow flexibility with regard to irregularities and non-compliances provided for by rules 5 and 6 do not apply to a situation where a respondent fails to present a response on the prescribed form within 28 days of the date of the copy of the claim was sent to it (rule 16(1)), I am not prevented from retrospectively granting an extension of time in respect of a decision under rule 20, providing I consider such extension to be just.
- 7.5 I consider it to be just to extend the time granted to the respondent to present its ET3 response to the claimants' claims from 13 January 2017 to the date of actual presentation on 17 January 2017 and to accept the respondent's response.

Employment Judge T Vincent Ryan

Date: 24.07.17

REASONS SENT TO THE PARTIES ON

1 August 2017

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FOR THE TRIBUNAL OFFICE