



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mr P Mishlakov**

**v**

**Respondent**

**Merriveen Limited**

## PRELIMINARY HEARING

**Heard at: Bury St Edmunds**

**On: 5 April 2018**

**Before: Employment Judge Laidler**

**Appearances:**

**For the Claimant: Mr F Heeroma, Representative**

**For the Respondent: Mr P Buck, Director.**

## JUDGMENT

- 1. The default judgment entered on 19 March 2018 is set aside and the response filed by the respondent on 26 February 2018 (together with its letter and accompanying documents of 6 February 2017) do stand as its response to these proceedings.**
- 2. Case management orders have been made as set out below.**

## REASONS

- 1. The ET1 in this matter was received on 15 January 2018. The time for service of the response expired on 28 February 2018. On the 19 March 2018 Employment Judge Warren entered a default judgment believing that no response had been received from the respondent. The file now records (but it is not clear whether it did at the time) that by email of 26 February 2018 the respondent had indeed filed its response.**

2. This hearing had been listed for a remedy hearing but was converted by the Judge to an open preliminary hearing to discuss the issue of the response and to then case manage the proceedings.
3. Mr Buck who attended this hearing on behalf of the respondent produced a screen shot from his sent email box to show that he emailed the tribunal on the 26 February 2018 with his ET3 and also with his letter which is wrongly dated the 6 February 2017.
4. Mr Buck also produced at this hearing a copy of the certificate of posting dated 26 February 2018 to the Watford Employment Tribunal which again was evidence of sending the ET3 and the supporting letter and documentation. Mr Buck explained that the reason why he did both was because it was snowing and he had concerns as to whether the response form would reach the tribunal within the requisite time period.
5. This tribunal could see that the letter of 6 February 2017 was date stamped by the Watford Employment Tribunal on the 27 February 2018. Although it appeared that the response did not have any details of the respondent's defence, Mr Buck explained this was because he could not fit all of the information into the relevant box on the form and this is why he put it all in the accompanying letter and sent relevant documentation.
6. The above all having been discussed, the claimant's representative accepted that the default judgment should not have been entered as the tribunal did have the response form at that time and the default judgment has therefore been set aside.

## **CASE MANAGEMENT SUMMARY**

### **Case management discussion**

1. There is no dispute that the claimant's dates of employment were the 24 July to 6 September 2017.

### **Jurisdiction**

2. The respondent believed that the claim was out of time, even taking into account the early conciliation requirements. The Judge drew the parties attention to s.207B of the Employment Rights Act 1996 which provides as follows:-

**“207B Extension of time limits to facilitate conciliation before institution of proceedings**

- (1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”). But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.
- (2) In this section—
  - (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
  - (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
- (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.
- (4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
- (5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.”

3. It therefore appears that the claim form which was received on 15 January 2018 was indeed received in time and the Respondent did not seek to dispute that.

**Claims brought in the ET1**

4. In the ET1 form the claimant ticked the following boxes:-
  - 4.1 Unfair dismissal.
  - 4.2 Race discrimination.
  - 4.3 Notice pay.
  - 4.4 Holiday pay.
  - 4.5 Arrears of pay.

Unfair dismissal

5. The claimant accepts that he had not served two years' qualifying service such as to entitle him to bring a complaint of ordinary unfair dismissal.

Race discrimination

6. The claimant asserts that he was dismissed by text message and that the sole reason for his dismissal was that his English language skills were not adequate. He asserts this is an act of race discrimination, he being Bulgarian.
7. For the respondent it is asserted that the text message that the claimant relies upon and which he says was sent on 6 September 2017 was not sent on that day, but was in fact sent in August and that the claimant continued to work thereafter. It is the respondent's case that the claimant was dismissed for gross misconduct in damaging a lorry of the respondent's.

Monetary claims

8. As stated above the respondent's position is that the claimant damaged a lorry incurring costs to the respondent of £1,416.29. That was deducted from any monies due to the claimant under clause 10 of the claimant's contract.
9. On behalf of the claimant it was not disputed that there is such a contractual entitlement but it is submitted that there was no consultation or other discussion with the claimant about the amount of the deduction. Further, it is argued that no training was given to the claimant to drive the particular container lorry in question and if there had been the incident would not have occurred.

£250 withheld wages

10. It is not clear what this sum related to. The claimant explained that this had been deducted before the accident, approximately two weeks before. The respondent produced with his letter of 6 February 2017 details of wages paid and there did not appear to be such a deduction. Further, the claimant was off sick under a sick note dated 7 August for two weeks.
11. The claimant then explained that he believed the deduction had been for a fuel tank that had been damaged. Mr Buck who is alleged to have been involved in that matter had no recollection of it.
12. The claimant also claims £176.83 in outstanding Holiday pay and £357.40 in sick pay. His representative did not have his calculations with him and undertook to file and serve these within seven days of the date of this hearing.
13. The above represent the matters that will now go forward to a full merits hearing which has been listed for 1 day taking into account any dates to avoid of the parties. The claimant who is Bulgarian would benefit from an interpreter on the next occasion. Mr Buck did not have his diary with him, and if the date that the

hearing has been listed turns out to be a date on which he cannot attend he will apply back to the tribunal within seven days of the date of this hearing for a postponement setting out his reasons.

## ORDERS

### Made pursuant to the Employment Tribunal Rules 2013

#### 1. Amended response/Further information

1.1 By the **12 April 2018** the claimant to file and serve detailed calculations showing how the amount of holiday pay and sick pay claimed has been calculated.

#### 2. Disclosure of documents

2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **3 May 2018**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.

2.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.

2.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

2.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

#### 3. Bundle of documents

3.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.

3.2 To this end, the claimant is ordered to notify the respondent on or before **28 May 2018** of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.

3.3 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **4 June 2018**.

3.4 The respondent is ordered to bring sufficient copies (at least five/three) to the tribunal for use at the hearing, by 9.30am on the morning of the hearing.

4. **Witness statements**

4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.

4.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

4.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

4.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

4.5 It is ordered that witness statements are exchanged so as to arrive on or before **2 July 2018**.

5. **Listing the hearing**

5.1 The case has been listed for a **1 day** hearing at **Bury St Edmunds Employment Tribunal, 1<sup>st</sup> Floor, Triton House, St Andrews Street North, BURY ST EDMUNDS, IP33 1TR on Wednesday 1 August 2018** before a full tribunal.

**CONSEQUENCES OF NON-COMPLIANCE**

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

2. The tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

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**Employment Judge Laidler**

12 April 2018

Sent to the parties on:

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For the Tribunal:

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