Case Number: 3303895/2018

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr MS Ould-Hocine	v	**Casual Dining Group Limited**

PRELIMINARY HEARING

Heard at: Watford **On: 29 May 2018**

Before: Employment Judge Bloch QC

Appearances:

For the Claimant: **In Person**
For the Respondents: **Mr Bidnell-Edwards, Counsel**

JUDGMENT

1. Upon application by the respondents by letter to the tribunal dated the 18 May 2018 (and orally today):
   1.1 under Rule 71 of the Employment Tribunal Rules of Procedure (the "Rules") to reconsider the judgment granted by default (judgment on liability only) dated the 23 April 2018 (signed on the 3 May 2018); and
   1.2 under Rule 20 for an extension of time for presenting their response;
   the judgment is revoked and an extension of time is granted in respect of the response until the 25 May 2018 (when the response was submitted to the tribunal).

2. The case is listed for a preliminary hearing (Case Management) with an estimate of two and a half hours on the **13 August 2018** at **10 am**. The parties should attend by **9.30 am**.

REASONS

1. By letter dated the 18 May 2018 from Gateley Plc (solicitors to the respondents) they stated that they had become aware of a default judgment on liability only

against their client dated the 23 April 2018, as they were subscribed to "Employment Tribunal Decisions" updates on GOV.UK. The judgment was published that day at 11.15 am (18 May 2018). They stated that their client was unaware of the proceedings or of any requirement to present a response and would not have known of the existence of the judgment but for Gateleys having received the published decision via the email service.

2. They applied for reconsideration of the default judgment on the grounds that the proceedings had not been received by the respondents and the respondents were unaware of the requirement to file a response. They added that the application was made on the basis that it would not be in the interests of justice to allow a judgment in respect of the public interest disclosure, age, race and religious discrimination claim together with unpaid wages and notice pay to stand without the respondent having had the opportunity of responding to the various claims.

3. They further submitted with regard to the balance of prejudice, that although there might be a delay for the claimant, if the judgment was set aside, that was outweighed by the prejudice to the respondents for not having had the opportunity to defend the various claims.

4. Finally, the tribunal was asked to treat this letter as an application for an extension of time for the filing of a response by the respondents for a period of 21 days from the date of any future decision with regard to that issue.

5. Today Mr Bidnell-Edwards presented the case in a slightly different way although on essentially the same grounds. He put first his application under Rule 20 for an extension of time for presenting the response and then relied upon Rule 20(4) to the effect that if the decision is to allow an extension, any judgment issued under Rule 21 should be set aside.

6. It is perhaps academic which application is put first i.e. under Rule 20 or under Rules 70 to 72. It seemed to me to be fundamental to the question of fairness underlying either application to consider carefully the evidence put forward by the respondent as to its not having received the claim form (or indeed the notice of hearing and requirement to serve a response) and the default judgment itself.

7. The applications are slightly unusual because the respondents accept that the address provided by the claimant to the respondent for service of these documents (namely 163 Eversholt Street, London) is the correct address of the head office of the respondents and as the claimant strongly urges upon me, it seems more than strange that neither the claim form nor the subsequent documents to which I have referred, were received by the respondents.

8. That said, I heard evidence from Mr W Morgan, an HR Director and senior employee of the respondent, that he first became aware of this claim on the 18 May as indicated in the above letter from Gateleys. Thereafter within a very short (and intense) period of time the response was sent to the tribunal by email dated the 25 May 2018.

9. He provided detailed evidence of exactly who would have been expected within his HR team (or that of another HR team at the same office) to have received any such tribunal communications. He also gave evidence that he had made very detailed enquiries of every such person who could have been expected to receive such a communication (whether personally or through the post or by email) and no-one was able to identify the documents as having been received. To the contrary, the outcome of his enquiries was that no-one within the large organisation in which he is employed but who would have been likely to receive such documents from the tribunal, had in fact received those documents.

10. That was the position despite the existence of a clear system under which anyone receiving such documents would report them to the HR function and ultimately to himself, since he was responsible for final sign-off of any response to a tribunal claim.

11. At the end of the day I am left with the task of judging where the likelihood lies in this case. On the one hand, there is the oddity of not just one but two and possibly three separate documents not being received by the designated employees who should receive such documents in the respondent organisation.

12. On the other hand, there was the clear evidence of Mr Morgan both of his not being aware of any such documents and of his making exhaustive enquiries of all those who would have received such documents had they been delivered to that address.

13. Further, there was no evidence on the tribunal file and none that was produced to me to indicate that ACAS had communicated with the respondents in connection with this claim. Mr Morgan's evidence was that he had been unable to find that any such contact had been made.

14. In all the circumstances - and having regard to the detailed refutation of the claim which appears in the response - it seemed clear to me that the interests of justice lay in revoking the order granting default judgment so that there could be a full hearing of this case.

15. I should mention a further point made on behalf of the respondents (which I regard as relevant but which weighed somewhat less strongly with me) ie that the claim form is extremely vague in certain areas and that the tribunal should not have granted default judgment, without at least making further enquiries.

16. It is right to say that the claim form does appear to be very skimpy in relation to what might be thought to be critical averments necessary to pursue the claims being made. For example, in relation to the whistleblowing claim the precise nature of the protective and qualifying disclosures is not set out, and the causal relationship between such disclosures and the alleged detriment is not clearly set out in by means of a clear chronology of events, or otherwise.

17. Similar points were made with some force in relation to the indirect discrimination claim with there being questions in regard to the "PCP" and similarly in relation to the direct discrimination claim as to who committed the acts of direct discrimination. There was similar lack of clarity in relation to the unpaid wages claim as regards the amounts and the dates on which they should have been paid. These points provide some further support for the submission that the justice of the case requires that there should be a full merits hearing.

18. I accordingly reinstated the Case Management Conference which will now go ahead in August on the date mentioned above. It is clear to me that the respondents will want to serve a request for further information. However, time did not allow consideration of any such request at this stage. I leave it to the respondents to make any such request they wish to make of the claimant and if he is not responsive in relation to those requests, to make application to the tribunal, if and insofar as may be appropriate.

19. Lastly, I should make it clear that at the beginning of the hearing today, the claimant indicated a wish to postpone today's hearing so that he could consider matters further. However, any such postponement did not seem to me to be in the interests of justice. The key evidence was likely to lie within the respondents' organisation, their applications depending in particular on the persuasiveness of their evidence that they did not receive the relevant tribunal documents until the 18 May. It did not seem to me that there was any real prospect that a postponement would enable the claimant to improve his position and he could not demonstrate or suggest any respect in which he might realistically be able to improve his position with the benefit of such a postponement. On the contrary, it seemed to me that any further delay would be to the prejudice of both parties. I therefore did not accede to the applicant's request.

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Employment Judge Bloch QC

5/6/18

Sent to the parties on:

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For the Tribunal:

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