



## THE EMPLOYMENT TRIBUNALS

**Claimant**  
**Mr G Crozier**

**Respondent**  
**William Scott Dickson t/a WD Motors**

**EMPLOYMENT JUDGE GARNON**  
**HELD AT NORTH SHIELDS**

**ON 11 January 2019**

**JUDGMENT (Liability Only)**  
**Employment Tribunals Rules of Procedure 2013 –Rule 21**

**The claims of unfair dismissal and breach of contract are well founded . Remedy will be decided at a hearing to be fixed with a time estimate of two hours**

### **REASONS**

1. The claim was presented on 2 August 2018. Both the claim form and Early Conciliation Certificate gave as the respondent's address "3 North View Farm, The Avenue, Newcastle upon Tyne NE20 0JD." The claim form was posted to that address on 3 September 2018. It was returned by Royal Mail marked "addressee gone away" and in red ballpoint ink capital letter manuscript on the envelope "NO LONGER AT THIS ADDRESS". The Employment Tribunals send letters in envelopes bearing a return address. When they come back with manuscript comments, it suggests they have been seen by an occupier of the premises to which they were sent.
2. I directed it be re-sent to the trading address given on the claim form "WD Motors, Vroom Car Retail Park, Orion Way, North Shields, Tyne and Wear NE29 7SN" which it was on 18 September. It was returned by Royal Mail marked "addressee gone away".
3. At the request of Employment Judge Buchanan the claimant provided another residential address "1 Faldo Drive, Seaton Vale, Ashington, Northumberland NE63 9JL" with evidence from the Land Registry the respondent was the registered proprietor. Employment Judge Johnson ordered the claim form be amended to show that address and the claim be sent there which it was on 26 October. Employment Judge Buchanan extended the time for filing a response to 23 November. He had performed a Company Search before issuing his Order and found no current company named WD Motors Ltd save for one in London.
4. On 23 November a call was received from a lady saying she was the respondent's estranged wife and he no longer lived at the Faldo Drive address but with a lady at an address "in Annitsford". She said she was going to get someone to contact him.

5. The claimant's solicitor ( who has done more than any other solicitor I can recall to help effect service ) traced the address as 40 Annitsford Drive, Dudley, Cramlington Northumberland NE23 7RU and emailed the Tribunal on 29 November thus

*We act for the Claimant in the above-matter.*

*We apply for the final hearing listed for 2 January 2019 to be postponed. This is on the basis that the Respondent has eluded service, the timeline for this is as follows:*

- *On 4 June 2018 the Claimant alleges he was dismissed by the Respondent at his business premises on Vroom Car Retail Park, Orion Way, NE29 7SN. Soon after this date the Respondent vacated these premises and left no forwarding address – at the time the Claimant was not aware of this.*
- *On 30 July 2018 the Claimant undertook a directory search to find “William S Dickson” and his partners last known address to be 3 North View Farm, NE20 0JD.*
- *On 1 August 2018 the Claimant issued an ACAS Early Conciliation Notification against the Respondent at this address*
- *On 2 August 2018 the Claimant issued his ET1 with the Tribunal*
- *On 3 September 2018 the Claimant received the “Notice of Claim” which stated the Respondent was to respond by 1 October 2018*
- *On 18 September 2018 the Tribunal wrote to the parties stating that the Respondent was no longer at 3 North View Farm, NE20 0JD and the claim was being re-served on the business address.*
- *On the same day the Tribunal asked if the Claimant was aware of any other addresses for the Respondent.*
- *On 20 September 2018, the Claimant wrote to the Tribunal providing evidence of the directory search as mentioned above*
- *On 25 September 2018, the Tribunal wrote: “Does the claimant have any other address or is the claimant prepared to (arrange for) serve personally?”*
- *On the same day, upon investigation, the Claimant found that the Respondent was the sole owner of a residential property and the Claimant wrote to the Tribunal with this information*
- *On 27 November 2018 Employment Judge Johnson directed the Claimant that the Respondent's (estranged) wife telephoned to say Mr Dickson has not lived at the address provided for 3 years and asked for further information about the whereabouts of Mr Dickson.*
- *On the same day the Claimant provided the address the Respondent is believed to now live at with his Partner Miss Laura Thompson and her children.*

*The Claimant is apologetic that his attempts to get in contact with the Respondent have not been successful, however in the Claimant's submission this is not because of a lack of trying. We submit that the hearing on 2 January 2019, because of the above events, is unlikely to be of any benefit as the Claimant would only have had the Respondent's response for a matter of days – that is assuming the Respondent does respond.*

*We look forward to hearing from the Tribunal in due course.*

6 The hearing was postponed . No response was received. I am required by rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination can be made and, if it can obliged to issue a judgment which may determine liability and/or remedy. I consider the above judgment appropriate because the claim form gives sufficient information to enable me to find the claims proved on a balance of probability but not to determine the sums to award .

7. On 10 January 2019 the claimant's solicitor emailed the Tribunal

*We act on behalf of the Claimant and respond to the Employment Tribunals letter dated 8 January 2018.*

*We have since heard from the Respondent's partner, Ms Laura Thompson, that the Respondent does not live at the address 40 Annitsford Road, NE23 7BU. It is the Claimant's position that this is a misrepresentation and Mr Dickson does live at this property with Ms Thompson and her daughters – as previously stated in an email to the court on 29 November 2019 (see attached). Further the Claimant submits that he has taken all reasonable steps in serving the Respondent with the claim form by providing his last known business trading address on the form ET1, his last known residential address according to public directories, the address of the property he owns and finally the 40 Annitsford Road, NE23 7BU address.*

*It is the Claimant's position that Ms Thompson and the Respondent (Mr Dickson) are still in a relationship, please see attached a recent screenshot from the parties Facebook page, where the Respondent has uploaded a photo of the two of them just 21 hours prior to 14:30pm on 10 January 2019 – for the avoidance of doubt, Mr Dickson's preferred name is his middle name "Scott."*

*It is therefore the Claimant's position that judgment in default be entered. However, the Claimant would be remiss if he did not provide the address Ms Thompson states the Respondent lives at, this is: 1 Warreners Barnes, Morpeth, Northumberland, NE61 3BX. We look forward to hearing from the Tribunal.*

8. I am convinced the claim has come to the notice of the respondent and no injustice by entering a Rule 21 judgment . However, if he has not physically seen the claim form service is in my view deemed effective anyway . In Zietsman and Du Toit t/a Berkshire Orthodontics-v-Stubbington the question on the appeal was whether an Employment Tribunal was entitled to conclude Mr Du Toit, had been properly served with the proceedings and consequently to dismiss his application for a review of a decision upholding complaints and awarding compensation. Ms Stubbington was employed by a firm called Berkshire Orthodontics which carried on business from 37 Crossway House, High Street, Bracknell, Berkshire. From 1998 Mr Zietsman and Mr DuToit were partners and jointly and severally Ms Stubbington's employer. In 1999, representatives of the Berkshire Health Authority attended the firm's premises and removed certain files. A fraud investigation apparently commenced. On the same day, Mr Du Toit flew to South Africa on a pre-booked holiday. The following day Mr Zietsman walked out saying he did not intend to continue the practice. Thereupon the employment of the staff, including Ms Stubbington, ceased.

9. On 7 June 1999, she presented her complaint to the Tribunal, naming Berkshire Orthodontics at 37 Crossway House as Respondent. No response was entered and on 1 October 1999, the complaint came before a Judge sitting alone. He proceeded to hear the claim in their absence and upheld it by a decision promulgated with summary reasons on 18 October 1999 (the original decision).

10. On 28 October 1999, Mr Du Toit lodged application for review of the original decision saying he had received notification of the decision on 22 October but did not know about the Tribunal case until that date. That review application was heard by a full Tribunal on 21 January 2000. By a decision with extended reasons, (the review decision) dated 10 February 2000, the Tribunal dismissed the review application.

11. The Tribunal identified the relevant provision in the Employment Tribunal Rules of Procedure 1993 as Rule 11(1)(b) by which it had power to review its decision on the ground that *"(b) a party did not receive notice of the proceedings."* They heard evidence from Mr DuToit, none of which they rejected

12. They concluded the proceedings were served at the Bracknell premises He had ceased to practice from that address after his return from South Africa on 12 April 1999. By then Mr Zietsman had left the scene. Mr Du Toit had transferred his personal practice to Fleet, Hampshire. Having done so he did not visit the Bracknell premises, nor make arrangements for mail to be forwarded to him. The Tribunal regarded that as thoroughly irresponsible conduct, to which his ignorance of the proceedings was wholly attributable. In these circumstances they declined to review the original decision.

13. Mr DuToit's Counsel submitted the Tribunal failed properly to construe and apply the statutory rules as to the giving of notice and further that their refusal to allow a review contravened Article 6 of the European Convention on Human Rights At a preliminary hearing, His Honour Judge Peter Clark said the simple fact was the claim was heard and determined in the absence of Mr DuToit in circumstances where there was no finding that he had actual notice of the proceedings. Whether or not he was deemed to have notice under the provisions of section 7 of the Interpretation Act 1978, was a question which ought to be argued at a full hearing. Of more general importance was whether, if he was deemed to have notice under the domestic legislation, that state of affairs was in some ways incompatible with the right to a fair trial under Article 6.

14. At the full hearing His Honour accepted that whether Mr DuToit was deemed to have received documents for the purpose of Rule 11(1)(b) was to be determined by the statutory provisions contained in the 1993 Rules, read in conjunction with Section 7 of the Interpretation Act 1978. See Migwain Ltd v TGWU [1979] ICR 597; followed in T & D Transport v Limburn [1987] ICR 696, Rule 20(3) provided *"All notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post ... to*  
*(c) in the case of a notice or document directed to a party –*  
*(i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, ... or*

*(ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom*

...

Section 7 of the Interpretation Act provides

*"Where an Act authorises or requires any documents to be sent by post (whether the expression 'serve' or the expression 'give' 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."*

15. Mr DuToit's Counsel submitted the deeming provision under Section 7 can only arise where the letter is properly addressed and the Crossway House address was not the proper current address of the firm or the partners.

16. The 2013 Rules use language sufficiently similar to the 1993 Rules to convince me the DuToit case is still good law :

**86.—(1) Documents may be delivered to a party (whether by the Tribunal or by another party)—**

*(a) by post;*

*(b) by direct delivery to that party's address (including delivery by a courier or messenger service);*

*(c) by electronic communication; or*

*(d) by being handed personally to that party, if an individual and if no representative has been named in the claim form or response; or to any individual representative named in the claim form or response; or, on the occasion of a hearing, to any person identified by the party as representing that party at that hearing.*

*(2) For the purposes of sub-paragraphs (a) to (c) of paragraph (1), the document shall be delivered to the address given in the claim form or response (which shall be the address of the party's representative, if one is named) or to a different address as notified in writing by the party in question.*

17. HH Judge Clark put to Counsel the proposition that Rule 20(3)(c)(ii) included service at the last known place of business, by analogy with the table appearing after Part 6.5(6) of the CPR, and before those Rules, RSC Order 10 Rule 1(2)(a) ("usual or last known address"). Order 7 Rule 1 of the County Court Rules 1981 provided:

*"(1) where by virtue of these rules any document is required to be served on any person and no other mode of service is provided by any Act or rule, the document may be served—*

*(a) ...*

*(ii) in the case of a proprietor of a business, by ... sending it by first-class post to his last known place of business;"*

The last provision echoed the provisions of the RSC and CPR

18. The EAT held the expression "any other known address or place of business" includes the last known place of business. HH Judge Clark said

*"We say that in the context of employment protection legislation. It will often be the case that an employer goes out of business and ceases to trade from the premises at which the former employee worked. In such circumstances where is the employee to direct his claim? It must be to the last known place of business. We cannot believe that in drafting the 1993 Rules it was thought that good service required service at a current place of business to the exclusion of the last known place of business."*

19. The EAT also considered Article 6 of the European Convention on Human Rights and held the right to a fair trial applies to both parties . It is a simple matter for the employer to make arrangements for collection or redirection of post addressed to his last place of business. It found the proceedings were "properly addressed" to the firm's last known place of business.

20. By analogy with that case, if the respondent has not physically seen the claim , it is at best his own fault , at worst because he has been doing his best to avoid it . I see no reason to prolong the case by continuing to " chase" the respondent be re-sending the claim to 1 Warreners Barnes, Morpeth, Northumberland, NE61 3BX but a copy of this judgment will be sent there as he has the right to be heard on remedy.

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**TM Garnon Employment Judge**  
**Date signed 11<sup>th</sup> January 2019.**  
**SENT TO THE PARTIES ON**

**14 January 2019**

**G Palmer**

**FOR THE TRIBUNAL**