EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112604/2018

Held in Glasgow on 19 December 2018

Employment Judge: Mr W A Meiklejohn

Mr Steven McCullagh	**Claimant** **Represented by:** **Ms A Divecha-Kanji** **Solicitor**
Analog Republic Limited	**Respondent** **Represented by:** **Ms C Helling** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:-

(a) The Judgment dated 12 October 2018 issued following the Hearing on 4 October 2018 is revoked; and

(b) The Respondent's application for an extension of time for presenting a response to the claim is granted (and the response submitted on behalf of the Respondent is accepted).

REASONS

1 I issued a Judgment on liability dated 12 October 2018 (the "original Judgment") in favour of the Claimant following a Hearing in Glasgow on 4 October 2018. That Hearing proceeded on the basis that the Respondent had not lodged an ET3 response form. A Hearing on remedy was subsequently listed for 7 December 2018.

2 By letter dated 16 November 2018 the Respondent's representative sought (a) reconsideration of the original Judgment under Rule 71 contained in

Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and (b) an extension of time under Rule 20 for presenting a response to the claim. There was also an application to vacate the Hearing on remedy.

3 A draft of the Respondent's proposed ET3 did not accompany the Rule 20 application because the Respondent had not as at 16 November 2018 had sight of the Claimant's ET1. The proposed ET3 was sent to the Tribunal by the Respondent's representative on 7 December 2018. I was satisfied that the Respondent had provided an explanation of why it was not possible for a draft of the ET3 to accompany the application made under Rule 20(1).

4 By their letters dated 22 November 2018 and 12 December 2018 the Claimant's representative objected to the applications under Rules 71 and 20. They did not oppose the application to vacate the Hearing on remedy but submitted that this should be postponed and relisted.

5 The grounds upon which the Respondent's applications under Rules 71 and 20 were made were set out in the said letter of 16 November 2018 and can be summarised briefly. The address given in the Claimant's ET1 for the Respondent was Flat 108, City Pavillion, 33 Britton Street, London EC1M 5UG. This had been the home address of Mr D Currie, one of the Respondent's directors, between 10 July 2014 and 1 June 2017. Mr Currie had then moved to Flat 4, 1 Hoxton Square, London N1 6NG. The Claimant was aware of this because he had attended the Respondent's Christmas party on 16 December 2017.

6 The Respondent also alleged that the Claimant was aware of the address of their registered office (20-22 Wenlock Street, London N1 7GH) because this was set out in the Respondent's offer letter to the Claimant dated 25 August 2015. The Respondent had not received the Claimant's ET1 or other correspondence relating to the case and had been unaware of the proceedings until 15 November 2018. This was why the application had been submitted outwith the period of 14 days referred to in Rule 71.

7 The Claimant's representative denied that the wrong address had been used. Each of the Claimant's payslips and his P45 had given the Respondent's address as Flat 108, City Pavillion, 33 Britton Street, London, EC1H 5UG. Any failure to ensure that this documentation was accurate was the fault of the Respondent, not the Claimant. It would not be in the interests of justice to grant the Respondent's applications.

8 I did not refuse the application under Rule 71 (in terms of Rule 72) on the basis that there was no reasonable prospect of the original Judgment being varied or revoked. I did not express a provisional view on the application. I directed that the Hearing on remedy should not proceed. Both parties agreed that the Respondent's applications under Rule 71 and Rule 20 should be decided without a Hearing.

9 I reminded myself of the terms of Rules 70-72. An application for reconsideration of a Judgment could be granted where it was necessary in the interests of justice to do so.

10 The normal time limit for making such an application was, in terms of Rule 71, 14 days. However, I could extend this time limit in terms of the Tribunal's power to extend or shorten any time limit specified in the Rules under Rule 5.

11 I was satisfied from the terms of the Respondent's representative's letter of 16 November 2018 that the Respondent had been unaware of these proceedings until 15 November 2018. In these circumstances I decided that it was appropriate to extend the time limit for submitting an application under Rule 71. The interests of justice required that the Respondent should be allowed to answer the claim brought by the Claimant. The prejudice to the Respondent if prevented from doing so outweighed the prejudice to the Claimant in losing the benefit of the original Judgment.

12 I was also satisfied that the Respondent should be allowed an extension of time under Rule 20 to lodge the ET3 and that the proposed ET3 submitted on behalf of the Respondent should be accepted. My reasons for so deciding were (a) the same as set out in the preceding paragraph and (b) that the proposed ET3 contained a stateable defence to the claim.

13 I noted from the Respondent's ET3 that a number of preliminary issues arose:-

(a) it was not conceded that the Claimant was disabled within the meaning of the Equality Act 2010;

(b) it was not conceded that the Respondent was aware of the Claimant's alleged disability; and

(c) it was alleged that the Claimant's unfair dismissal claim was time-barred.

14 I considered that it would be consistent with the overriding objective in Rule 2 to fix a Preliminary Hearing for the purposes of case management to determine further procedure in this case.

Employment Judge: Mr WA Meiklejohn
Date of Judgment: 20 December 2018
Entered in register: 21 December 2018
and copied to parties