



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Z Mohammed

**Respondent:** Raja's Indian Cuisine Birchington Ltd

**Heard at:** Teesside                      **On:** 13 April 2018

**Before:** Employment Judge Knowles

***Representation:***

**Claimant:** Ms A Rumble of Counsel

**Respondent:** Mr D Carmichael of Counsel

## REASONS

### **Evidence**

On behalf of the Respondent in relation to the Respondent's application for an extension of time to file a response I heard evidence from Mr Arsalan Suleman, Managing Director, and Mr Amir Suleman, an employee of the Respondent. They did not produce a bundle of documents.

### ***The Respondent's application for an extension of time to present a response***

1. I considered the evidence and the representation from both parties. The Claimant's claim was sent to the Respondent 16 February 2018 and the Respondent accepts that they received the claim forms. The Respondent's looked for a solicitor, and on 2 March 2018 spoke to Mr Ayaz Siddique at Kingston Law, emailed to him all of the papers, including a claim form and blank ET3 form. Mr Siddique confirmed receipt a few days later and there has been email contact between then and 11 April 2018 between the Respondent and Mr Siddique during which he confirmed that everything was fine and they had arranged representation for the Preliminary Hearing today. Then on 11 April 2018 Mr Siddique contacted Mr Arsalan Suleman and said they needed to fill in the response form immediately and send it to the tribunal. They did so. They posted it on 11 April 2018. It arrived by post at North Shields on 12 April 2018. The response was 3 weeks 6 days late. The application for an extension of time is only made today. The response contained no cover letter from the Respondent or Kingston Law. There has been no explanation from Kingston Law as to why they did not file a response, when they were

instructed, or indeed any specific detail about their involvement in the case. They submitted a case management agenda form on 11 April 2018 to the tribunal but had not requested to go on record as acting. I take into account the reason given for the failure to enter a response within the time limit, namely that the Respondent had trusted that their solicitor was taking care of everything. The Respondent appears to have provided instructions to their solicitor in good time. The delay is quite substantial, almost 4 weeks. Whilst I have an explanation why the Respondent failed to respond earlier, I have no explanation why the Respondent's solicitors did not file a response between 2 March 2018 and 10 March 2018, or apply for an extension of time and seek to file one earlier than 11 April 2018. I find that remarkable in an application for an extension of time. More so that the Respondent's solicitors telephoned the Respondent to tell them to complete the form themselves and post it on the day they were completing a case management agenda which they sent to the tribunal by a faster means, email. I have no reason to question the Respondent's witness evidence on the failure by their trusted solicitor. I consider the explanation of the reasons for the solicitor's delay between 2 March 2018 and 12 April 2018 unexplained which is unsatisfactory. Serious allegations are made about the Respondent which they wished to respond to. This weighs on the balance of prejudice in the sense that the Respondent's may have a remedy against their solicitors if they are unable to gain an extension in time. The merits of the response are difficult to comment upon because the response is very brief and there is a dispute as to whether the Claimant resigned or was dismissed. The response does not however engage with the four core claims which relate to the Claimant asserting health and safety issues in relation to the meat he was required to cook. Taking all of these matters into account and in all the circumstances the application for an extension in time to file a response is refused.

#### Liability findings

2. The Claimant confirmed that he only wished to pursue a claim against his employer, the Respondent. He stated that he did not wish the tribunal to bring any claim against Mr Mohammed Suleman on a personal basis.
3. The Claimant confirmed that he does not bring any complaint under Section 47B of the Employment Rights Act 1996. He suffered no detriment other than being dismissed which is, effectively, his Section 103A claim.
4. In my conclusion the Claimant has brought clear claims of unfair dismissal under Section 98 and 103A, and a complaint of racial harassment under Section 26 of the Equality Act 2010.
5. No application for an extension of time is outstanding for the purposes of Rule 21(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations, Schedule 1.
6. On the information available to me and in the absence of an accepted response from the Respondent, I concluded that judgment should be entered on the Claimant's claims under Rule 21.

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**Employment Judge Knowles**

24 July 2018

**Note**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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