



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Rai

**Respondent:** Leicestershire Police

**Heard at:** Leicester **On:** 29 January 2019

**Before:** Employment Judge Dyal (sitting alone)

## Representation

**Claimant:** In Person, with assistance from Mr Harry Rai (Uncle)

**Respondent:** Mr D Ring, Solicitor

**JUDGMENT** having been sent to the parties on 4 February 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. The Tribunal issued a default judgment pursuant to rule 21. This hearing was listed to decide whether or not the Respondent's application for it to be revoked and time extended for entering a response should be allowed.

## The Hearing

2. The Claimant represented himself with some assistance from his Uncle, Mr Harry Rai. The Respondent was represented by Mr Ring. The Tribunal was presented with a short bundle of documents by the Claimant running to some 19 pages. The Respondent presented a witness statement from Mrs Stacey-Midgley, a skeleton argument and some authorities. The Tribunal

also had regard to the Tribunal file and where it did so it notified the parties that that is what it was doing and what the file showed.

3. The Tribunal heard evidence from Mrs Stacey-Midgley who was cross examined and it also heard brief evidence from the Claimant who was also cross examined.

### **Findings of Fact**

4. The Tribunal makes the following findings of fact on the balance of probabilities.
5. The claim was presented on 1 July 2018. It contains complicated complaints of race and sex discrimination. A notice of claim with case management orders dated 23 July 2018 was sent to the parties after the Tribunal had accepted the claim. The notice of claim also attached the claim itself. The case management orders included an order for the Claimant to provide a schedule of loss to the Respondent by 3 September 2018.
6. It appears, and I on balance find as a fact, that the notice of claim and the claim form were never received by the Respondent (for reasons I will come to). The Claimant sent the Respondent a schedule of loss by post on 30 August 2018. It is likely that it was received on 31 August or if not then on 1 or 3 September.
7. The schedule of loss was sent without a cover letter but it was correctly sent to the Respondent's headquarters. It is not clear what happened to this document or who initially dealt with it but it was eventually sent, probably in the internal post, to the Respondent's M27 office which is the office at which the Claimant had worked and as set out further below there was some delay in this happening.
8. A rule 21 judgment with remedy to be determined was made on 5 September 2018. The judgment, a letter indicating that the claim was not quantified and asking for further information together with notice of a remedy hearing were sent to the parties. These documents were sent to the parties under the cover of two letters, one dated 17 September 2018 and the other 18 September 2017.
9. Mrs Stacey-Midgley is essentially the key person at the Respondent for dealing with Tribunal claims. She coordinates the response to claims. She liaises with witnesses, the legal department and HR. In effect she is the key person to whom Tribunal documentation needs to be seen. She was on leave between 13 and 23 September 2018. She returned on 24 September, was absent on 25 September and was then in work thereafter.
10. On 27 September 2018, Mrs Stacey-Midgely received a telephone call from Tracey Meakin, HR Business Partner, at the M27 office. Ms Meakin had that day received the schedule of loss which the Claimant posted on 30 August 2018. So it seems that the schedule of loss was in the Respondent's possession for approximately 3½ weeks or so and only made its way to Ms Meakin on 27 September 2018. Upon receiving this call from Ms Meakin, Mrs Stacey-Midgley made enquiries and they included enquiries of whether or not the claim form had ever been received. I am satisfied that she made reasonable internal enquiries, the outcome of which was a conclusion (which I

accept) that no claim form had been received. However, as a result of these inquiries, Mrs Stacey-Midgley, was swiftly passed the letters from the Employment Tribunal, one dated 18 September 2018 and the other dated 17 September 2018. These letters comprised, the default judgment, the claim not quantified letter and the notice of remedy hearing. It appears likely that the Respondent received those letters from the Tribunal at some time around 18/19 September 2018. It is not clearly explained why it is that it took about a week or so for those letters to make their way to Mrs Stacey-Midgley or why someone else did not deal with them for the part of that period that Mrs Stacey-Midgley was absent.

11. On 1 October 2018 Mr Ring, the Respondent's solicitor contacted the Employment Tribunal at Nottingham and was able to obtain for the first time a copy of the ET1 and the attached particulars of claim. Later that day he e-mailed the Tribunal with an application to set aside the judgment that had been obtained, setting out the essential reason: the claim form had not been previously received. It was clear from that correspondence that Mr Ring was indicating that the Respondent intended to defend the matter and was applying for an extension of time to enter a response. That is my construction of the application that he made.
12. On 8 October 2018 the Claimant responded to that application objecting.
13. On 29 October 2018, Mr Ring wrote again to the Employment Tribunal enclosing a draft ET3 and grounds of resistance and the witness statement of Mrs Stacey-Midgley. I am satisfied that the explanation that he gave today as to why there was a delay between 1 and 29 October 2018 in submitting a response to the claim, is a truthful one. He said it was quite an undertaking to take instructions on the Claimant's case and there were lots of documents to be gathered and reviewed. There were a number of formal internal processes to be followed and all in all, it took time to file the draft response. I find all of that entirely plausible particularly given the wide-ranging nature of the claim.
14. A Preliminary Hearing had been scheduled to take place to consider the application of 1 October on 1 November 2018 but it was vacated owing to a lack of judicial resources.

## **The Law**

15. The relevant rules are rr. 2, 16, 20, 21 and 70 of the *Employment Tribunals (Rules of Procedure) Regulations 2013, sch.1*. I have considered the rules carefully and do not recite them here for economy.
16. In ***Quick Save Stores v Swain*** [1997] ICR 49, the Employment Appeal Tribunal gave general guidance. In essence the tribunal has to take into account all relevant factors, balance them against each other and then exercise its discretion as to whether or not to revoke the default judgment and/or to extend time to enter a response. The key factors for the Tribunal to consider are usually the explanation for the delay, the balance of prejudice and the question of whether defence has any merits.
17. In ***Leabette v Bournemouth Borough Council*** (unreported) UK EAT/0010/11/SM the Employment Appeal Tribunal in effect cautioned against taking too technical approach when construing the rules of procedure. An application to revoke a default judgment can by implication include an

application for an extension of time to enter a response. It will not necessarily do so, it is a question of construction of the application.

## **Discussion and Conclusions**

18. I am satisfied that it is in the interests of justice to revoke the default judgment and to extend time for entering a response.
19. The essential explanation for the delay in the presentation of the response is that the claim form was not received until 1 October 2018. There was certainly some room for doubt about whether that was correct or not but on balance I am satisfied that that was indeed the case. I consider that it is likely that if the claim had been received prior to that, it would have turned up when Mr Stacey-Midgley made her enquiries.
20. In terms of the quality of this explanation, it is a good explanation for the most part albeit that there is a degree of culpability. The schedule of loss was sent on 30 August 2018 by the Claimant so received either at the end of August 2018 or the beginning of September 2018. It is unimpressive that it took until 27 September for that document to find its way to somebody who appreciated its importance and to actually do something about it. So I think there is a degree of culpability there. Then there is also the fact that the letters from the Employment Tribunal which were sent on 17 or 18 September 2018 were not processed for about a week or so after they were received. That is also unimpressive.
21. Finally, it took about 28 days for draft grounds to be provided. I do accept there was good reason it to take so long: responding to the claim required a lot of work.
22. So as I say I think there was a broadly good explanation for the delay albeit not a perfect one because there are some elements of culpability.
23. Prejudice is the next critical factor to consider and in my judgment is an overriding one.
24. It is clear to me that in revoking the default judgment and extending time there is some prejudice for the Claimant. He loses the benefit of a default judgment. But that is a windfall benefit and it's something that is mitigated by the fact that he still has the opportunity to prove his claim in the same way he would have done if the response had been presented in time.
25. The Claimant also suffers a delay of several months that has been occasioned by the late presentation of the response and that is a prejudice of a sort. However I am satisfied that in this case that delay is not significant prejudice because there is nothing before me to suggest that it has led to any forensic prejudice, that is, making it significantly more difficult for him to present and prove his claim for example because documents are no longer available or because witnesses are no longer available.
26. On the other hand, if I do not revoke the default judgment the prejudice to the Respondent is profound. A judgment of discrimination against it is a grave stain on its reputation and may damage public confidence in it. The allegations are many and serious. Further, there is bound to be significant

compensation if the claims succeed, at the least injury to feelings and possibly also pecuniary loss.

27. Finally, on the face of it the defence is perfectly arguable.

28. All in all, in my judgment, it is in the interests of justice to revoke the default judgment and extend time for entering a response.

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Employment Judge Dyal

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Date 02.04.2019

Slip at paragraph 13 corrected on 08.07.2019

JUDGMENT SENT TO THE PARTIES ON

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