



EMPLOYMENT TRIBUNALS

Claimant: Miss F Updale

Respondent: Cable Cars (Nottingham) Limited

Heard at: Nottingham **On:** Friday 12 July 2019

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: In Person

Respondent: Miss N Owen of Counsel

JUDGMENT

1. The judgment dated 5 June 2019 and sent to the parties on 14 June 2019 is hereby revoked.
2. The application for an extension of time to lodge the ET3 is granted.
3. The response is accepted.
4. Case management directions including the date of the hearing are enclosed.

REASONS

Background to this Hearing

1. The Claimant presented her claim to the Tribunal on 30 January 2019. Prior to the presentation she had been in touch with ACAS. The date of receipt by ACAS of the early conciliation notification was 20 January 2019 and the date of the issue of the certificate was 30 January 2019.
2. The Claimant had been employed from 7 September 2018 to 4 January 2019 as a Board Operator/Telephonist.
3. Her claims were of: -
 - Maternity/pregnancy discrimination
 - Failure to provide a written statement of terms and conditions of employment
 - Other payments

4. The claim was accepted and listed for hearing for 8, 9 and 10 June 2020 and a Preliminary Hearing was set for today's date.
5. The claim form was sent to the Respondent with the usual letter on 16 April 2019. That letter required the Respondent to file a response (ET3) by 14 May 2019.
6. On 20 May 2019 Mrs Stoppard wrote to the Tribunal saying that she had just received the claim form and she was told to file an ET3 with an application to extend time.
7. On 5 June 2019 I signed a judgment under Rule 21 of the Employment Tribunal Rules 2013 ("the rules") as by that time we had not received an ET3.
8. On 7 June 2019 solicitors for the Respondent made an application to extend time and set aside any judgment that had been issued in default. The grounds for that application were: -
 - 8.1 The fact of the injury of Mrs Stoppard and her absence from work.
 - 8.2 The prospects of success.
 - 8.3 The prejudice to the Respondents.
9. At the outset of this hearing I explained that I had to decide whether to exercise my discretion about whether it was in the interests of justice to allow the Respondents to defend the action and set aside the default judgment taking into account all the circumstances.

Evidence

10. I heard from Julie Stoppard who is a Director of the Respondents. Both parties provided bundles of documents but where I refer to page numbers it is normally from the Respondent's bundle. If it is not I will say so.
11. I had no reason to doubt the honesty of Mrs Stoppard in the evidence that she gave to me at the hearing.

The Facts

12. Julie Stoppard is the sole Director of the Respondent company. It is a taxi firm. She has a manager Mr Browning and 5 or 6 Telephonists/Board Managers who allocate work. The 46 drivers are all self-employed. She also has a disabled husband who is 77 years old.
13. On 15 April 2019 she suffered an accident at home. As a result, she had to attend the Queens Medical Centre and I have seen the discharge document from there (page 39-40). That confirmed that she had suffered an injury to her head which had been treated and she had been discharged that day.
14. I have also seen sicknotes saying because of a fall she was not able to attend work. These sicknotes are at pages 33-4. I accept her evidence that from 15 April she was not at work until 19 May 2019. She has still not fully returned to work now.

15. On 19 May 2019 she went into the office and found the letter. The following day she sent an e-mail to the Tribunal. She said: -

“I am writing to explain that I have been off work from 15 April, signed off by the doctor 9 until 27 May 2019. I have had a fall from the top of the stairs where I sustained a head injury and had to go to hospital to have stitches. I also damaged my neck and soft tissue. I am in possession of doctor’s state of fitness to work certificates. I am back at the doctors on 28 May to ascertain when I will be able to return to work.

Unfortunately, I have only received your correspondence from the office yesterday regarding the Tribunal dates. Obviously, I am not in a position to deal with this correspondence at this moment in time. Therefore, I am requesting a postponement of this Employment Tribunal hearing at such time as I am fit to return to work to deal with this.”

16. The Tribunal office responded after that letter had been put before my colleague Employment Judge Britton. The Claimant was told of the procedure for extending time. She was sent a further copy of a blank ET3 to complete. She was told about rule 20 of the rules. That she was required to file a response with the application to extend time.

17. The Claimant on receipt of that e-mail immediately contacted solicitors and they contacted ACAS on 28 May 2019 to find out what the position was.

18. On 7 June 2019 they lodged the ET3 together with an application to extend time and to set aside any judgment that had been issued. At that time, they had not received the judgment.

19. On 14 June 2019 a copy of my judgment dated 5 June 2019 was sent to the parties.

The Law

20. Reconsideration of judgment is dealt with in Rule 70-72 of the rules. I have to be satisfied is that it is in the interests of justice to grant the reconsideration. I have a wide discretion which should be carefully applied. I have to consider prejudice in respect of each of the parties. I also have to take into account the overriding objective set out in Rule 2 of the rules.

My Conclusions

21. In this case I am satisfied that the Respondents must have been aware of the potential claim because the Claimant had written to the Respondents on 9 January 2019 to say that she intended to contact ACAS and make a claim to the Tribunal.

22. The Claimant had contacted ACAS prior to commencing the proceedings and I am confident that the Respondent would have been aware that a claim was imminent.

23. I am also satisfied that the letter from the Tribunal was properly addressed and received and was not marked private and confidential. Although the Respondent was not in attendance at her officer her manager was and the

Respondent should have had systems in place to ensure that correspondence was dealt with. There is no real reason why the letter should not have been opened and referred to Mrs Stoppard.

24. However, in this case I am satisfied that it is in the interests of justice to revoke the judgment in favour of the Claimant, to grant the extension of time to lodge the ET3 and accept it. The reasons for this in this case are as follows: -

24.1 I am satisfied that Mrs Stoppard had sustained a serious injury on 15 April 2019 to her head.

24.2 I am satisfied that she was and still is off work and did not attend the office until 19 May 2019.

24.3 This is a small business with limited resources.

24.4 I am satisfied that she was only aware of the claim on 19 May 2019 which was just 5 days after the ET3 should have been presented.

24.5 Mrs Stoppard then acted promptly and wrote to the Tribunal on 20 May asking for an extension of time. At that time, she was not legally represented and did not know the process.

24.6 Mrs Stoppard instructed solicitors immediately she received the response from the Tribunal.

24.7 The solicitors acted promptly and made their application. They lodged the ET3 23 days late.

24.8 Having viewed the ET1 and the ET3 there are substantial issues between the parties that need a hearing. The case was not listed for hearing until June 2020 so there is no substantial prejudice to the claimant if she has a good claim.

24.9 I am satisfied that there will be substantial prejudice caused to the Respondent if I did not grant the applications. This is not a minor claim. It is a substantial claim and would cost the Respondents in the region of £19,000 as per the Claimant's schedule of loss. This is a small business with limited resources and the imposition of such an amount would have devastating consequences for the business.

25. In all these circumstances I am satisfied that it is just and equitable to: -

25.1 Set the judgment aside.

25.2 Grant an extension of time to file an ET3.

25.3 Accept the ET3.

Employment Judge Hutchinson

Date 22 July 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE