



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Collins

**Respondent:** Stevenage Football Club Limited

**HEARD AT:** Cambridge: 9 August 2019

**BEFORE:** Employment Judge Michell (sitting alone)

**REPRESENTATION:** For the Claimant: Miss E Wheeler (Counsel)  
For the Respondent: Mr A Tunbridge (Chief Executive)

## RESERVED JUDGMENT

The respondent's application under r.71 of Schedule 1 to the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013 to set aside the r.21 judgment sent to the parties on 15 July 2019 is allowed, and the respondent is granted an extension of time until 4 October 2019 to file and serve its Notice of Appearance and Grounds of Resistance.

## REASONS

### BACKGROUND

1. The claimant worked as a function manager for the respondent from 1 November 2012 until 10 February 2016, and from 8 May 2016 until her summary dismissal on 31 January 2019. By an ET1 presented to the tribunal on 12 April 2019, she alleges that her dismissal was both unfair and wrongful.
2. By a letter dated 2 May 2019, Watford employment tribunal wrote to the parties giving standard directions. The letter informed the respondent that any response to claim needed to be received by the tribunal office by 30 May 2019.
3. By a letter dated 15 July 2019, the tribunal wrote to inform the parties that judgment had been entered against the respondent in the absence of receipt from the respondent of a response to the claim. The letter gave a standard directions under rule 21 regarding future participation by the respondent.
4. By a letter dated 22 July 2019, and following a letter from the respondent dated 16 July 2019 which was treated by the tribunal as an application to reconsideration of the judgement, EJ Laidler directed the respondent to (amongst other things) provide “full details of your proposed defence”.
5. Mr Tunbridge under cover of an email dated 2 August 2019 explained to the tribunal, albeit in somewhat nebulous terms, the bases for the defence.
6. Miss Wheeler sensibly conceded that the information Mr Tunbridge had provided in that email, whilst not very precise, did amount to a substantive defence to the claim. In essence, it is the respondent’s case that the claimant was dismissed for gross misconduct.

## **HEARING**

7. Today's hearing was originally set to be the final hearing. However, pursuant to a letter from the tribunal dated 7 August 2019, it was converted to a preliminary hearing to determine the respondent's application for reconsideration of the default judgment.
8. Mr Tunbridge gave evidence regarding material events. Miss Wheeler was given the opportunity to question him, and she duly did so. She did not choose to call the claimant, who was in attendance, to give evidence (which was unsurprising - given the issues to be determined, the key information needed to come from the respondent).
9. Mr Tunbridge explained, by reference to electronic diary notes that had been made at the time, that following receipt of the tribunal's 2 May 2019 letter a meeting took place on 16 May 2019 at which the respondent's defence to the claim was discussed. I accept that evidence.
10. He told me, and I accept, that shortly after the 16 May meeting he completed a notice of appearance, writing out by hand the information required in the ET3. At box 6, his handwritten note states "please see submitted evidence pack which the grounds of defence are based on". He explained to me, and I accept, that the "evidence pack" to which he referred was an assortment of relevant documentation (e.g. disciplinary and appeal meeting outcome letters etc) which he had collated to accompany the ET3. Those documents would have spelt out in some detail the reasons for the respondent's decision to dismiss the claimant- though, of course, those reasons ought to have been properly articulated in the ET3.
11. Mr Tunbridge told me, and I accept, that he put both the ET3 and the accompanying documentation in an envelope, which he addressed to Watford Employment Tribunal and which he put in the respondent's postal outbox chain on 23 May 2019. He marked the envelope as needing to go via recorded delivery. However, he accepted that there was no proof the envelope had in fact been sent by recorded delivery (or at all). The

book which is used to itemise letters etc being sent by recorded delivery did not refer to the envelope.

12. He told me, and I accept, that once he had put a document in the outbox tray, he left it to a volunteer to send the paperwork out. He then went on holiday until 12 June 2019, assuming the documentation had indeed been posted (which it may not have been -albeit there was no sign of it in the office when enquiries were made).
13. Miss Wheeler questioned Mr Tunbridge on why in various email communications with the tribunal in June and July 2019 he had not referred to the fact that he had completed and supposedly sent an ET3 (as well as other papers) to the tribunal in May. Mr Tunbridge explained, and I accept, that this was because he was unsure of the documentation to which the tribunal was making reference/because he (wrongly) thought the tribunal was referring to paperwork sent by him in accordance with the disclosure order made in the tribunal's 2 May 2019 letter.
14. Miss Wheeler also asked Mr Tunbridge why he had chosen to send the ET3 by post, rather than by soft copy and email. I accept his evidence that this was because he had received the tribunal's initial correspondence by hard copy, and sought to return his documentation using the same format.
15. I understand why these points were put by Miss Wheeler. They go to the issue of whether or not Mr Tunbridge in fact filled in the ET3 in May, and put various other accompanying documents with it, and placed it in the postal outbox tray on 23 May. But having heard from him, and seen the paperwork he provided, I have found he did do so.
16. It appears that documents were probably not sent by recorded delivery. It may or may not have been that the documents were sent by ordinary post. In any event, it appears Watford employment tribunal either never received them, or mislaid them.

17. However, as I see it, given:

- (a) the fact that respondent took care to prepare the ET3 and accompanying documentation, and that it tried to send/thought it had sent the material to the tribunal, prior to 30 May 2019 deadline;
- (b) the relatively short delay to date (and the promptness with which, once notified of the judgment, the respondent applied for reconsideration);
- (c) the absence of evidence of any substantive prejudice to the claimant (beyond some regrettable further delay in resolution of matters); and
- (d) the fact that the respondent has a reasonably arguable defence to the claim (whether or not it eventually succeeds)

it is appropriate and in the interests of justice to set aside the 15 July 2019 default judgement, and make provision for a properly articulated defence to the claim to be filed and served.

18. I have given case management directions under cover of a separate document.

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Employment Judge Michell, Cambridge

Date: 09/08/19

JUDGMENT SENT TO THE PARTIES ON

.....30.08.19.....

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FOR THE SECRETARY TO THE TRIBUNALS

