EMPLOYMENT TRIBUNALS

Claimant: Mrs S Gillett

Respondent: The Commissioners for HM Revenue & Customs

Heard at: Manchester **On:** 1 October 2019

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: Mrs L Wallis (Friend)
Respondent: Miss C Knowles (Counsel)

JUDGMENT

The response filed by the respondent by email on 10 September 2019 is accepted and acknowledged as the response of the respondent to the claims of the claimant. The respondent's application for an extension of time pursuant to Rule 20 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is granted.

REASONS

1. The claimant lodged her claim form on 17 June 2019. No response was filed by the respondent within the relevant time limit and a "no response" letter was sent to the respondent on 18 August 2019. The claim form and associated documentation from the Tribunal had been sent by the Tribunal to the respondent at the correct address and with the correct postcode on 25 June 2019. By email dated 3 September 2019 solicitors instructed by the respondent wrote to the Tribunal to confirm that they had now been instructed, and a response and application to extend time in which to file a response was lodged with the Tribunal on 10 September 2019.

2. At the beginning of a Preliminary Hearing held at the Manchester Employment Tribunal on 1 October 2019 the claimant, represented by her friend, Mrs Wallis, Mrs Wallis indicated that the claimant was not "formally" objecting to the application to extend time under Rule 20. Mrs Wallis explained that the claimant was not consenting

but that she understood that the Tribunal would nevertheless scrutinise the application of the respondent and make a decision in accordance with the relevant legal principles.

3. The respondent was not able to provide any evidence about any system that they operated for recording the receipt of items of mail which were sent to them. The Tribunal was told that the respondent had two separate teams, one team called the Permanent Secretary Team, and the other team being the Core Work Team which dealt with applications to Tribunals. It was their responsibility to ensure that matters relating to Employment Tribunals were dealt with properly and promptly. In the absence of any evidence about any system for the recording of mail the best that can be said on behalf of the respondent was that there was no record of the claim form and associated documentation having actually been received by the respondent. Subsequent letters sent to the respondent at the same address and with the same postcode safely arrived on 18 August and 20 August. Miss Knowles explained that those letters were received by the Permanent Secretary Team and promptly send to the Care Work Team who then instructed solicitors and they in turn contacted the Tribunal on 3 September to say that they were now instructed. An application to extend time and to file a draft response was not received by the Tribunal until seven days later on 10 September 2019. No satisfactory explanation was provided by the respondent as to why there had been that further delay of seven days in filing the application to extend time. On the face of it, therefore, the Tribunal concluded that the evidence about the systems of the respondent and the failure to file a draft response and apply for an extension of time within what the Tribunal considered would have been a reasonable timescale remained unexplained.

4. The Tribunal accepted, however, that the claims of the claimant required significant clarification, even taking into account the further and better particulars which the claimant had provided. The claimant had not engaged with the statutory language of the relevant sections of legislation to which it appeared that she was referring, and had not addressed the definition of disability in accordance with section 6 of the Equality Act 2010. The respondent told the Tribunal that they did not accept that the claimant was at all relevant times a disabled person, and neither did they accept that the person, Tony McKenna, was a disabled person. The claimant says that he was disabled and that her association with him led, so the claimant says, to the claimant sufferng a detriment/less favourable treatment at the hands of the respondent. There was therefore a real issue between the parties as to whether or not the claimant and/or Mr McKenna was a disabled person.

5. The Tribunal also took into account that the respondent was a large Government Department and that if the claimant was successful ultimately in any or all of her claims that it was guaranteed that the respondent employer would be in a position to pay any compensation which was ordered.

6. The Tribunal agreed with Miss Knowles when she pointed out that due to the way in which the claims of the claimant had been presented to the Tribunal and indeed the way in which the claimant had tried helpfully to clarify her claims, that there would still have been a need for a preliminary Hearing to be held by way of case management and that on that basis any delay to the hearing of the merit of the claims of the claimant was minimal.

7. From the draft response which had been served by the respondent at the time of submitting an application for an extension of time, it was clear that the claims of the claimant were denied and that there were a number of witnesses who would give evidence. It was equally clear that all those witnesses were still able to give evidence and so any short delay would not prejudice the ability of the Tribunal to hear from all the relevant witnesses and make the relevant findings of fact, either in favour of or against the claimant.

8. The Tribunal reminded itself that the case law is generally silent as to the test to apply when deciding whether not to grant an extension of time under Rule 20. The Tribunal has a wide discretion. The Tribunal, however, took into account the overriding objective and the need to make any decisions fairly and justly and on a just and equitable basis. The obligation of the Tribunal was to balance all the relevant factors, including the attitude of the claimant. The Tribunal reminded itself, however, that the view of the claimant did not determine the application. Rule 18 of the Rules of Procedure 2013 makes it clear that a response "shall be rejected" if it is submitted out of time.

9. Having taken all the relevant factors into account the Tribunal decided that it was just and equitable to exercise its discretion in favour of the respondent to extend time up to and including 1 October 2019 to file a response, that response being the one which had been submitted by the respondent on 10 September 2019. The Tribunal accepted that the delay in filing the response was of relatively short duration, approximately six weeks. The Tribunal considered the balance of prejudice to the parties. The claimant would not be prevented from bringing any of her claims and the delay which had occurred would not prejudice her ability to argue and pursue her claims. If she succeeded in any of her claims then in view of the identity of the employer the claimant's compensation would actually be paid. The Tribunal reminded itself that the disability of two individuals was in issue, and that the claims of the claimant still required significant clarification. Whilst the Tribunal was of the view that the respondent had taken too long to respond to the letter sent to them on 20 August telling them that no response had been filed, the Tribunal nevertheless concluded that it was just and equitable for time to be extended.

Employment Judge Whittaker

Date: 3rd October 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

8 November 2019

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