



# EMPLOYMENT TRIBUNALS

**Appellant**

**Respondent**

**Urban Living Constructions Ltd v**

**Mr Adam Thompson**

**Heard at:** London Central Employment Tribunal

**On:** 19 November 2019

**Before:** Employment Judge E Burns

## **Representation**

**For the Appellant:** did not appear

**For the Respondent:** did not appear

## **JUDGMENT BY CONSENT**

The judgment of the Employment Tribunal is as follows:

1. The parties named in the ET1 submitted on 16 September 2019 are amended by consent as follows:
  - The appellant is Urban Living Constructions Ltd
  - The respondent is Adam Thompson
2. The tribunal has jurisdiction to consider the appellant's appeal under rule 105 of the tribunal rules.
3. The appeal against the Prohibition Notice Serial Number N/ANT/050819/03 issued by Mr Adam Thompson on 5 August 2019 is upheld and the notice is overturned.

## **REASONS**

1. The appellant was issued with a prohibition notice by Health and Safety Inspector Adam Thompson on 5 August 2019.
2. The appellant submitted an appeal against the notice to the Employment Tribunal on 16 September 2019 under Rule 105 of the Tribunal Rules.

That appeal incorrectly named the appellant as Mr Pedro Pereira and the respondent as the Health and Safety Executive.

3. The parties have agreed in correspondence with the tribunal that the parties can and should be amended to the correct parties shown above.
4. The appeal was submitted outside the normal time limit of 21 days provided for under Rule 105. The notice was issued on 5 August 2019 and the appeal was received on 16 September 2019. This is a delay of 22 days.
5. Rule 105(1)(b) allows the tribunal to consider a claim submitted "*within such further period as the Tribunal considers reasonable where it is satisfied that it was not reasonably practicable for an appeal to be presented within that time.*" This is a question of fact for the tribunal.
6. The appeal form included an application for an extension of time for submission of the appeal and gave the reason for the delay as "*because we weren't allowed back in to site for a long period.*"
7. The appellant did not attend the hearing. Mr Thompson did not submit a response to the appeal, but wrote to the tribunal explaining that he would not be seeking to resist the application to extend time. In addition, he confirmed that he would not be opposing the appeal. On that basis he sought leave from the tribunal not to attend the preliminary hearing. The tribunal confirmed that his attendance was not required and it appears that this has been misunderstood by the appellant as also applying to it.
8. The appellant has expanded on the reason for the delay in submitting the appeal in subsequent correspondence to the tribunal. An email dated 8 November 2019 explains that the reason for the delayed appeal "*is due to the fact that we weren't allowed back into site for quite some time, which has delayed the investigation works that would determine if an appeal should be done.*"
9. Ignorance of important facts has been held to be a legitimate basis for allowing an extension of time, particularly when those facts are essential to the decision to bring the claim. This appears to be the case here. Although I would have ideally liked to have heard more about the precise circumstances of the delay from the appellant at the hearing, I am satisfied, based on the written submissions, that it was not reasonably practicable for the appellant to submit the appeal in time as the appellant did not know, until investigations could be undertaken, that an appeal could be submitted.
10. I am also satisfied that the time within which the appeal was presented is reasonable given that it was only 22 days.
11. Rule 48 of the Tribunal Rules allows me to convert today's hearing from a preliminary hearing to a final hearing, provided I am satisfied that neither party will be prejudiced. Both parties want the tribunal to make a final

determination on the appeal as soon as possible and therefore I am exercising this power and treating myself as having the consent of the parties to do so.

12. As Mr Thompson is not opposing the appeal, I have decided that the prohibition notice should be overturned. The appeal therefore succeeds.

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**Employment Judge E Burns**  
**19 November 2019**

Sent to the parties on:

20 November 2019

For the Tribunals Office