



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Ms S Lazdane

NHS Property Services Limited

**HELD AT** Birmingham

**ON** 13<sup>th</sup> December 2019

**EMPLOYMENT JUDGE** Choudry

**Representation:**

**For the claimant:** Mr F Currie (Counsel)

**For the respondent:** Ms L Gould (Counsel)

## JUDGMENT

The respondent's application for an extension of time to file a Response is granted. The respondent has until 20<sup>th</sup> December 2019 to file a Response.

## REASONS

1. The claimant issued a claim on 24<sup>th</sup> July 2019 for unfair dismissal, race discrimination and detriment for having made a protected disclosures. The claim form gave the respondent's address as St Chads Court, 123 Hagley Road, Edgbaston, Birmingham, B16 9RG. The claimant herself worked at William Farr House, Mytton Oak Road, Shrewsbury, Shropshire, SY3 8XL.

2. The claim form was served by the Tribunal on the respondent at the St Chads Court address on 13<sup>th</sup> August 2019 indicating that any Response had to be served by 10<sup>th</sup> September 2019. On the same date the parties were sent a Notice of Preliminary Hearing (case management) for today's hearing.
3. No Response was received.
4. On 1<sup>st</sup> November 2019 the claimant's representative wrote to the Tribunal seeking a default judgment.
5. On 13<sup>th</sup> November 2019 the Tribunal wrote to the respondent to indicate that as no Response had been received the Tribunal were considering entering Judgment. This letter was sent to St Chads Court, William Farr House and also to the respondent's registered office.
6. On 20<sup>th</sup> November 2019 the Tribunal received an application from Pinsent Masons LLP, acting on behalf of the respondent, for an extension of time to present a response under Rule 20 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules").
7. The claimant objected to the application.
8. I heard evidence today from Ms Elouise Lyford, the respondent's Principal Business Partner in the North. In her evidence Ms Lyford indicated that the respondent's offices were at 213 Hagley Road and not 123 Hagley Road as indicated by the claimant. However, Ms Lyford accepted that the error by the claimant had arisen from a typo on the respondent's letterhead.
9. Ms Lyford's evidence was that she found the Notice of Claim and the Notice of Preliminary hearing whilst visiting St. Chads court on 19<sup>th</sup> November 2019. She had not been able to get to the bottom of when the documents had been received nor when they had been opened.
10. Ms Lyford further indicated that the respondent had conducted a fair process in relation to the redundancy exercise in which the claimant was involved and that the respondent had good grounds to defend the claim for unfair dismissal. In relation to the claims for race discrimination and detriments for having made a protected disclosure her evidence was that the respondent was not aware of any such claims and were awaiting further information.

## **THE LAW**

11. Rule 20(1) of the Rules provides that :

*"An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible."*

12. Rule 20 does not specify the grounds upon which the Tribunal may grant an application for an extension of time to file a response. However, the general view is to consider whether it is just and equitable to do so as

per **Office Equipment -v- Hughes UKEAT/0183/16 and UKEAT/0226/16**. Consideration must also be had to the overriding objective.

### **SUBMISSIONS**

13. Ms Gould for the respondent submits that the whilst the explanation provided by the respondent may not be the best it is an honest one and the respondent was throwing itself at the mercy of the Tribunal. The respondent had acted quickly when it had become aware of the claim and was taking steps to obtain the relevant information. A Response had not been provided as whilst the respondent was able to defend and had knowledge of the allegations of unfair dismissal it had no knowledge of the allegations of discrimination or detriments of having made a protected disclosure. As such, the respondent was in the process of gathering information. Ms Gould submitted that the prejudice to the respondent would be more extensive than that to the claimant. If the Tribunal granted the application then the claimant would be put in the position she would have been had the Response been filed on time. However, the respondent would only be able to make limited representations at any remedy hearing. Furthermore, it would have a finding of discrimination against it which could affect its ability to tender for public contracts and therefore would suffer significant disadvantage.
14. Mr Currie for the claimant argued that the respondent had failed to comply with Rule 20. Not only had it failed to provide a draft Response at the time but no draft Response had been provided today. It was also argued that there were no substance to the respondent's denials. Mr Currie argued that the claimant would be prejudiced as due to the high turnover of the respondent's staff she may now find it difficult to track down witnesses.

### **CONCLUSIONS**

15. I have carefully considered the representations made by and on behalf of the parties and the balance of inconvenience to the parties if the application for an extension of time to file a Response is or is not granted. I accept that there will be some inconvenience to the claimant although I am surprised that those representing her had not made contact with potential witnesses much earlier in the process given that it would not have known when the claim was issued that the respondent would not file a response.
16. I accept the submission of Ms Gould that the respondent's explanation for the delay is not the best but equally I accept that it is a genuine one. On balance I am satisfied that the prejudice to the respondent would be more significant if I did not grant the application than the prejudice to the claimant if I did grant the application. The respondent would only be able to participate in any future hearings to the extent permitted by the Judge hearing the matter but it would also have a finding of discrimination made against it which could affect its ability to tender for public contracts. In the

circumstances, I grant the respondent an extension of time until **20<sup>th</sup> December 2019** to file a Response.

17. Once a Response had been filed the matter will be listed for a telephone preliminary hearing to give further case management orders in this case. The parties are to agree an agenda and draft List of Issues and to file these with the Tribunal 14 days prior to the preliminary hearing.
18. In respondent is ordered to pay the claimant's costs of the one hour telephone preliminary hearing, such costs to be assessed at the telephone preliminary hearing with both parties recognising that the telephone preliminary hearing will be conducted by a solicitor rather than counsel.

Employment Judge Choudry  
13/12/2019

**Note**

**Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.**