



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr N Edwards**

v

**Combinatrics Communications Ltd**

### PRELIMINARY HEARING

**Heard: BT Meet Me**

**On: 22 May 2020**

**Before:**

**Employment Judge JM Wade**

**Representation:**

**Claimant:**

**In person**

**Respondent:**

**Mr Walker (managing director)**

Introduction

This has been a remote hearing to which the parties did not voice any objections. The form of remote hearing was recorded Audio (BT Meet Me). A face to face hearing was not held because of the present Covid 19 circumstances. The application was for an extension of time to present a response/setting aside of a Rule 21 Judgment pursuant to Rule 20.

## JUDGMENT

It is not in the interests of justice to extend time for the presentation of a response: the rule 21 Judgment is confirmed.

## REASONS

1. I made the following findings of fact today (much of which was not in dispute and available on the file) and there follows my application of the law to the facts. I gave a summary of that decision to the parties today, but I provide it in writing as a matter of urgency given the circumstances and sentiments expressed by Mr Walker at the hearing.
2. The respondent offered employment to the claimant as a telecomms engineer subject to a written contract of employment, accepted on 1 November 2019. The contract provided for a salary of £48,500 and was terminated on 21 January 2020.
3. The address of the employer in that contract was: 28 Newlands, Leeds, LS28 5BB ("Newlands"). At the time, that was the registered office of the company, which installs telecoms related networks. I learned today Newlands is a residential address of a property then owned by Mr Walker's parents, which he, at the time, was renting from them, after they moved abroad in late 2018.
4. By 20 November 2019 Mr Walker had moved his residence to Kennington Farm Cottage, Willoughton, Gainsborough, Lincolnshire DN21 5SL ("Kennington"). Newlands was sold, and bought by persons known to Mr Walker. He made no formal

- arrangements for mail for him or the respondent to be forwarded; he believed he had notified “everyone”, and/or that the new owners would forward important mail.
5. On or around 25 November 2019 the respondent’s accountants, a firm in Manchester, notified the Registrar of a change of the respondent’s registered office, to Kennington. The firm did not notify the Registrar of a change of correspondence address for the respondent’s only director and controlling shareholder, Mr Walker. His correspondence address remained registered as Newlands. The respondent did not notify the claimant that its address (the information given in his employment contract) had changed.
  6. The parties had fallen into dispute about the claimant’s wages. The claimant’s claim is that the respondent failed to pay his salary but instead paid small amounts to his bank account, promising to pay the balance due when a client had paid the respondent. The fact of small payment was not in dispute. When the claimant complained, his employment contract was terminated.
  7. The claimant commenced ACAS early conciliation on 29 January 2020 and the ACAS officer was in touch with Mr Walker, who disputed the sums claimed in unpaid wages. The sum sought was £8726.04 (the balance of salary over sums paid).
  8. An ACAS certificate was issued on 12 February (required before an Employment Tribunal claim).
  9. The proceedings were then commenced by presentation of a claim form on 26 February 2020; that was sent to the Newlands address entered as the employer’s address in the claim form, on 28 February 2020. It arrived there on or around 2 March 2020 (there was no return by the Royal Mail).
  10. The response form was due to be returned by 27 March 2020. There was no response and a Judgment was signed by me on 9 April 2020 and sent to the parties on 14 April 2020 (“the Judgment”). I directed that the Judgment also be sent to the respondents’ registered office (which by this time, of course, had changed). There was no immediate application for an extension of time/set aside, nor was there payment.
  11. On 30 April 2020, the claimant having paid the fee of £66 for enforcement, a High Court Writ was issued. Mr Walker’s aunt, I was told, at some point before 4 May, retrieved the claim form and service documents from Newlands, and provided those to Mr Walker at Kingston.
  12. On 4 May 2020 the respondent then provided its response form to the Tribunal, some five weeks’ late and by a scanned copy in manuscript which was difficult to read. The essence of the defence was that external training of the claimant was required and the claimant knew that his initial period of employment was to be unpaid, albeit the respondent would pay for training, and that he had, in fact, only undertaken one day’s paid work.
  13. On 5 May 2020 the respondent’s Mr Walker provided further information to the Tribunal about his concerns following enforcement, confirming again by email the gist of the respondent’s defence.
  14. This hearing was then arranged to hear the application for extra time for the response to be accepted.
  15. Extending time is a matter of my discretion. I take into account the length of the delay, in this case it is more than five weeks. I take into account that the claimant has been put to the further expense of enforcement. I take into account the reasons for delay - a number of failures which have contributed to the chain of events: the failure to notify the claimant of a change of his employer’s address; the failure to organise any formal forwarding of mail; the failure of the accountants to notify the change of correspondence address for Mr Walker, such that it can reasonably be

- understood he will still receive correspondence posted there; the failure to apply promptly on service of the Judgment and before enforcement.
16. Mr Walker's position was simply that because he had not seen the claim he could not defend himself; and he took action when the bailiffs were at the door. He considered I should extend time because otherwise he would not have the opportunity for his defence (the company's grounds of response) to be heard.
  17. As to that defence, there was no dispute that there was no agreement in writing about there being no pay until training was completed, or jobs were completed (the essence of the defence) – this was strongly refuted by Mr Edwards. There was, however, an agreement in writing for salary. It is just about arguable that the employment did not start until the first job was done, but there was no provision to that effect, and it would have to be found from oral agreement or by some form of implication. Again, refuted by Mr Edwards. The general position is that persons of business are taken to mean what they say in written documents, contracts between them and pursuant to that contract the parties agree a salary was payable.
  18. This is not a defence I could strike out, but it is very weak. I also take into account that the respondent has had the opportunity to defend this case because Rule 15 has been observed. There is no need for service to a registered office, and Rule 15 was observed notifying the respondent company of the proceedings (see Campbell v Jamie Stevens (Kensington) Ltd UK EAT0097/19 at paragraph 27: "Where there has been an alleged failure to comply with Rule 15 what is likely to be required is a common sense, evidence-based enquiry as to what happened. Did what happen [sic] comprise compliance with the requirement to send the documents to the respondent? Where the Respondent is a company the question is likely to be whether the documents were sent to an appropriate address, for example, a place of business and addressed in such a manner that it was apparent the documents were sent to the person who was the Respondent to the claim. An inaccurate name is not the be all and end all. **Compliance with Rule 15 depends on an assessment of the facts.**")
  19. I directed the Judgment be sent to the registered office in case something untoward had happened to give the opportunity for a prompt application. Still Mr Walker delayed.
  20. There is some hardship to the respondent, a company with limited liability, in not having the opportunity for a full hearing of the evidence, but that prejudice is less than when the defence is weak. In contrast, Mr Edwards faces yet further cost, delay and hardship in pursuing, what is, in effect, a very strong debt claim. In all these circumstances I do not consider it in the interests of justice to extend time for the response and the application is refused. The considerations would be the same if put as an application to reconsider the Judgment. The Rule 21 Judgment is confirmed.

Employment Judge JM Wade

27 May 2020