



EMPLOYMENT TRIBUNALS

Claimant: Mr B Harris

Respondent: Red Storm Fashion Agency Ltd

Heard at: Cardiff **On:** 15 January 2020

Before: Employment Judge Ward

Representation

Claimant: Mr J Bromige (counsel)

Respondent: Mr R Johns (counsel)

JUDGMENT

1. The Respondents application for an extension of time is granted.
2. The Judgement of 20 January 2020 is set aside.
3. The ET3 dated 5 March 2020 is accepted.

REASONS

1. The Tribunal considered the application made by the respondent under Rule 20 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 to extend time to present a response. That written application was made on 5 March 2020 in accordance with Orders made at the case management hearing on 24 February 2020. The claimant objected to the application in writing on 11 March.
2. The applicable law is the Rule 20 (referred to above) and the case of Kwik Save Stores Limited v Swain ICR 49 which sets out the relevant questions for the tribunal to consider when considering the exercise of discretion in accordance with the overriding objective. Those questions are to consider the reason for the delay, the prejudice to the parties and the merits of the defence.
3. The claim form was submitted on 1 November 2000 with the response due on 30 November. A response was not submitted and therefore a default Judgement was promulgated on 20 January 2021. A remedies hearing was listed on 10 February 2020.
4. The reasons given for the delay were Ms Drury residing in America prior to the 15th December and Mr O'Connell being unwell and largely not at work. This is the evidence provided by the respondents witnesses and no documentary evidence

was provided to substantiate or disprove these facts.

5. The first correspondence from the Respondent with the Tribunal was on the 23 January where Ms Drury stated she did not receive the original paperwork. This correspondence at pages 125 to 133 of the bundle are contemporaneous from that time. Ms Drury's evidence in cross examination was a little confusing at times but was clear that she received the claim form on 23 January 2020 and not before. There was no documentary evidence before the tribunal confirming receipt of the claim form on the 23 January, however her evidence was clear that had she received it earlier she would have defended which is borne out by her actions since the 23 January in disputing the default judgement.
6. It is possible that Mr O'Connell did see the claim form in November 2020. The what's app messages alleged to have referred to the claim were not before the tribunal from either party. The claimant says he received a whats app message on 8 November 2019 from Mr O'Connell stating that "I have received your laughable court case." The Tribunal does not know if this was sent or not. Nonetheless it is clear that the reason for the delay was either the non receipt or not realising the significance of a claim form being received. Irrespective of the date actually received the respondent was clear in the emails of 23 January that it wished to challenge the default judgement and the Tribunal said it would be considered at the hearing on 24 February 2020 which it duly was with consequent orders made.
7. In the Tribunal's view the Respondent would suffer greater prejudice than the claimant if the extension was not granted. The claim is currently undefended, there are significant disputes of fact. To deal with the case fairly and justly requires a determination of the facts before a full Tribunal. The delay to the claimant from 30 November to 23 January is not a serious delay.
8. The Tribunal considered the merits of the defence. There are no admissions and the case is fully contested. The over riding objective requires that evidence is heard and findings of fact are made. There could be further evidence not contained in the preliminary hearing bundle and the fact that the ET3 is not fully particularised does not mean there is no defence.
9. The Tribunal therefore weighs these factors and concludes in all the circumstances that it is fair and just for the extension of time to be granted.

Employment Judge Ward

Date 15 January 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON 18 January 2021

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FOR THE TRIBUNAL OFFICE