



EMPLOYMENT TRIBUNALS

Claimant: Mr. D A Silva
Respondents: Simya Canteen Ltd

JUDGMENT ON RECONSIDERATION

The judgment of the tribunal is as follows:

1. I have reconsidered and revoke my judgment dated 20 October 2020 in accordance with Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 (“the Rules”).
2. Time for filing the ET3 is extended.

REASONS

1. The judgment of 20 October 2020 was made under Rule 21. At the time of making the judgment, I believed that the respondent had not presented a response to the claimant’s claim and had fallen foul of Rule 16 as a result.
2. However, by way of an application dated 5 February 2021, the respondent asserted that the claim was not formally served upon them and that they had made several unsuccessful attempts to obtain the papers. They say that they only became aware of the Rule 21 judgment in January 2021 following receipt of documents from ACAS. It appears that the Tribunal did indeed not respond to the respondent’s e-mails, a number of which have been supplied in support of this application. I also note that there are other defended proceedings which it is appropriate to consolidate with these (2206865/2020).
3. I have also carefully considered the claimant’s objections to the respondent’s application for an extension of time, made by an e-mail dated 12 February 2021. The claimant has indicated that he objects on the basis that the respondent should not be allowed another chance to answer the claim as they have missed all deadlines and

failed to communicate with him. Furthermore, the claimant objects because of the harm to his wellbeing that he has suffered due to the respondent's conduct. I am treating that as opposition to both the revocation of the judgment and extension of time.

4. I have carefully considered all the circumstances of this claim and concluded, first, that it would be in the interests of justice to revoke the judgment and, second, to grant an extension of time to enable the respondent to put their defence in respect of 'claim 1' before the Tribunal.

My reasons for this decision are, in essence, that the respondent should not be punished for what appears to be an administrative error, there is evidence to suggest that efforts were made by the respondent to obtain the necessary documents and they have taken steps to remedy the situation in a reasonably practicable timeframe. This is further demonstrated by the fact that they have defended the second claim 2206865/2020.

5. Applying *Kwik Save Stores LTD v Swain & Ors* [1997] ICR 49 to the facts of this case in respect of the application to extend time, I conclude that the Tribunal's discretion should be exercised in favour of the respondent. While I understand that this outcome might be frustrating for the claimant, such prejudice does not outweigh the potential prejudice faced by the respondent.

J Wade

Regional Employment Judge Wade

Dated: 14 May 2021

JUDGMENT SENT TO THE PARTIES ON

17/05/2021.....

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FOR THE TRIBUNAL OFFICE