



EMPLOYMENT TRIBUNALS

Claimant: Mr V Kearns

Respondent: The Barn Stoves and Fireplaces Limited

UPON APPLICATION of the Respondent made by letter dated 10 February 2021 to reconsider the Rule 21 judgment dated 2 February 2021 (*the Rule 21 Judgment*) under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing

JUDGMENT

1. The Rule 21 Judgment is revoked.
2. A copy of the claim form shall be sent to the Respondent (c/o its advisors Employment Law (UK) Limited) with this judgment.
3. The Respondent shall, if so advised, file a response to the claim forthwith accompanied by an application for a retrospective extension of time under Rule 20.
4. On or after the date falling 28 days after the date upon which this judgment is sent to the parties, or upon the receipt of a response to the claim if earlier, the file shall be referred to an Employment Judge for further directions.
5. The hearing listed for 7 September 2021 be re-converted to a Final Hearing, with a time estimate of 1 day.

REASONS

1. The Claim in this case was presented to the Tribunal on 15 October 2020.
2. Notice of the Claim in standard form ET2 was posted to the Respondent by the Tribunal on 4 December 2020. The postal address used was Unit 17 The Glenmore Centre, Orbital Park, Ashford, Kent TN24 0TL. This is a business address of the Respondent, but is not (since 11 May 2020) the registered office.
3. The file came before me on 2 February 2021 in circumstances where no response to the claim had been received by the Tribunal. There was also

no request for an extension of time present on the file. I directed that a Rule 21 judgment be issued. The Rule 21 Judgment was sent to the parties on 8 February 2021.

4. On 10 February 2021 the Respondent, through its advisors Employment Law (UK) Limited, issued an application for reconsideration and for an extension of time to present the Response. Its grounds in support of the application were, in summary, that:
 - a. The Claim Form had not been received;
 - b. The first notice the Respondent had of the claim was a letter from the Claimant dated 9 January 2021 and received on 15 January 2021 setting out a brief schedule of loss in accordance with the case management directions of the Tribunal;
 - c. The Respondent made contact with the Tribunal by telephone on 15 January 2021, speaking to “Nick” who instructed the Respondent to make an application in writing, copying the Claimant.
 - d. The Respondent duly emailed the Tribunal, copying the Claimant, on the same day, explaining that the claim form had not been received perhaps as a result of pandemic-related postal problems in the Kent area. The email requested that the claim form be re-sent and sought a 28 day extension of time for the response.
5. It appears from the file that the Respondent's email of 15 January 2021 was not received by the Tribunal. However, in emails dated 20 January 2021 and 8 March 2021, the Claimant acknowledges that he received such an email from the Respondent. It is clear, therefore, that such an email was indeed sent.
6. On 25 February 2021 a letter was sent to the parties at my direction inviting the Claimant to confirm his position on the reconsideration application, and both parties to offer their views on whether the application could be determined without a hearing.
7. By an email dated 26 February 2021 the Respondent's solicitors indicated they wished the application to be determined without a hearing.
8. By an email dated 8 March 2021 the Claimant did not comment on whether the application could be determined without a hearing. He did however set out objections to the application, those being that:
 - a. The Respondent was aware that the early conciliation process was underway and should have anticipated a claim after that ended;
 - b. The Respondent had not properly engaged with the Claimant prior to early conciliation being started;
 - c. It is questionable how the Respondent could have contacted advisors immediately on the day the Rule 21 Judgment was received yet claimed not to have previously had any contact regarding the claim.
 - d. Throughout the process the Claimant has engaged in communications and kept to deadlines.

9. I am satisfied that it is in accordance with the overriding objective to deal with cases fairly and justly for this application to be determined without a hearing. Both parties have made submissions in writing and I do not consider that there is anything more that could be achieved by convening a hearing. Moreover, proceeding in this way avoids delay and saves expense.
10. I have considered the written submissions of both parties. I find on the balance of probabilities that:
 - a. The notice of claim was not received by the Respondent. It is credible that delivery was affected by problems with the postal service in the circumstances of the ongoing pandemic, and the Respondent's subsequent actions are consistent with this finding.
 - b. Upon becoming aware of the claim on 15 January 2021 the Respondent took reasonable steps to obtain a copy of the claim form and secure an extension of time to respond. In particular an email was sent to the Tribunal on that date, albeit that it appears not to have been received by the Tribunal (see paragraphs 4.d and 5 above). In any event, no such email was on the file when I made the Rule 21 Judgment.
11. I am satisfied that it would not be fair and just for the Rule 21 Judgment to stand. Had the 15 January 2021 email been on the file on 2 February 2021, I would not have issued the Rule 21 Judgment and would instead have dealt with the request for an extension of time as an application under Rule 20.
12. It would be premature for me to determine an application for an extension of time under Rule 20 at this stage, as no draft response to the claim has been submitted and therefore it is impossible for me to consider all of the relevant factors set out in *Kwik Save Stores Ltd v Swain and ors* 1997 ICR 49, EAT – in particular the merits of the defence. Accordingly, consistent with the approach set out by the EAT in *Grant v Asda* 2017 ICR D17, I direct that the ET1 be re-sent to the Respondent (c/o its solicitors), and the respondent may, if so advised, submit a late response coupled with an application to extend time under Rule 20. If filed, that application may be considered by any Employment Judge, who can also consider appropriate case management directions.

Employment Judge Abbott
Date: 9 May 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE