



# EMPLOYMENT TRIBUNALS

**Claimant: Mr David Silva**

**Respondent: Simya Canteen Ltd**

## JUDGMENT

The respondent's application to extend time for the submission of its response to this claim, up to and including 05 February 2021, is granted. Further service is dispensed with. The reasons are set out after the case management orders.

## CASE MANAGEMENT ORDERS

1. A Full Merits Hearing (Final Hearing) of these cases will take place on **02 December 2021** at 10 a.m. with a time estimate of 3 hours.
2. On or before the **20 August 2021**, the claimant will provide to the respondent, with a copy to the Tribunal at [londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk), the further details of his claim:
  - a. A detailed schedule of loss setting out how much compensation for arrears of pay, notice pay and holiday pay he is claiming from 01 April 2020 to 12 August 2020 and how he has calculated the amount;
  - b. What is the basis for his claim of compensation of £5,000 in addition to his claim for arrears of pay, notice pay, and holiday pay.
3. The respondent will have leave, up to **10 September 2021**, to provide the claimant, with a copy to the Tribunal at [londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk), a counter schedule and to amend its response, if so advised, in the light of the claimant's further details.
4. The provisional list of issues set out at paragraph 6 of the Case Management Orders made following the preliminary hearing on 29 January 2021 will be the list of issues for the full merits hearing, subject to any additional issue raised by the further details of the claimant's claim for compensation.
5. The judgment dated 20 October 2020 in the claimant's claim 2204438/2020 was reconsidered and revoked on 14 May 2021. The claims have been consolidated and will be heard together. The issue in claim 2204438/2020 is has the respondent made an unlawful deduction from wages by failing to pay the claimant

the full wages due to him from 01 October 2019 to 31 March 2020. The following directions apply to both claims.

6. The intention is that the final hearing will be a remote hearing, by Cloud Video Platform, and further details and joining instructions will be sent to the parties prior to that hearing. If, for any reason, a remote hearing is unsuitable, the parties should write in as soon as possible and ask that a judge consider whether the hearing should be in person.

## **Documents**

7. By **4 p.m. on 24 September 2021** the claimant must send the respondent a list of all other documents he has relevant to the issues in the claims.
8. By **4 p.m. on 08 October 2021** the respondent must send the claimant a list of all documents it has relevant to the issues listed in the claims.
9. Documents includes recordings, emails, text messages, social media and other electronic information. You must send all relevant documents you have in your possession or control even if they do not support your case. A document is in your control if you could reasonably be expected to obtain a copy by asking somebody else for it.

## **File of documents**

10. By **22 October 2021**, the claimant and the respondent must agree which documents are going to be used at the hearing.
11. The respondent must prepare a file of those documents with an index and page numbers. They must send a copy to the claimant and to the Tribunal by email to [londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk) by **29 October 2021**.
12. The file should contain:
  - a. The claim and response forms, any changes or additions to them, and any relevant tribunal orders. Put these at the front of the file.
  - b. Other documents or parts of documents that are going to be used at the hearing. Put these in date order.
13. The claimant and the respondent must both have a copy of the file available to them at the hearing.

## **Witness statements**

14. The claimant and the respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement.
15. A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.

16. Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happened. They must also include any evidence about financial losses and any other remedy the claimant is asking for. If the witness statement refers to a document in the file it should give the page number.
17. At the hearing, the Tribunal will read the witness statements. Witnesses may be asked questions about their statements by the other side and the Tribunal.
18. The claimant and the respondent must send each other copies of all their witness statements by **05 November 2021**.
19. The claimant and the respondent must have copies of all the witness statements at the hearing for their own use.
20. By 4 p.m. **19 November 2021** the respondent must send an electronic copy of the hearing file and all the witness statements to the claimant and the Tribunal at [londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk).

#### Hearing preparation – video hearing

21. The respondent must send the file of documents electronically to the Tribunal office at [londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk) for the Tribunal to use.
22. All you need to know about preparing for hearings by video is in a separate document which I have added to the end of this record. Please read the guidance and information carefully.

#### Variation of dates

23. The parties may agree to vary a date in any order by up to 14 days without the Tribunal's permission, but not if this would affect the hearing date.

#### About these orders

24. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
25. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

#### Writing to the Tribunal

26. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

#### Useful information

27. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
28. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:  
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
29. The Employment Tribunals Rules of Procedure are here:  
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
30. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here:  
<https://www.gov.uk/appeal-employment-appeal-tribunal>

## REASONS

1. The respondent makes an application for an extension of time to present a response to this claim (rule 20 of the Employment Tribunal Rules of Procedure). The background to the need to make the application is set out in the case summary of the preliminary hearing that took place on 29 January 2021. Briefly, the respondent said it had been unaware that (i) a default judgment had been made in claim number 2204438/2020 (claim 1) or that (ii) the claimant had made this claim (claim 2) until making urgent enquiries following receipt on 28 January 2021 of the joining instructions for what was to have been the Final Hearing of claim 2 on 29 January 2021.
2. On 28 January 2021 the respondent sent a draft response and application for an extension of time, using the reference details of claim 1. The claimant indicated that he opposed the application. I directed the respondent to amend its application to deal with claim 2 and gave the claimant 7 days to respond to the amended application. I apologise to the parties that it has not been possible to deal with the application sooner.
3. I explained to the parties that when considering the respondent's application for an extension of time the Tribunal will apply the test set out in the case of **Kwik Save Stores Ltd v Swain and ors** 1997 ICR 49, EAT, and consider these three factors:
  - a. The respondent's explanation as to why an extension of time is required;
  - b. The balance of prejudice; and
  - c. The merits of the defence.
4. In its application dated 05 February 2021 the respondent said that it only became aware of claim 2 upon receiving notice of the hearing listed for 29 January 2021.

The email giving the notification of the hearing had the reference number for claim 1 in the subject line. The respondent had been unable to prepare and submit a response to claim 2 as it had no knowledge of the claim until 28 January 2021.

5. The respondent says that it will suffer prejudice if it is unable to submit a full response to claim 2, but the claimant will not suffer such prejudice. It is in the interest of justice for the respondent to be able to put its defence to the claim. The respondent contests the claim and if it is not allowed to defend the claim, the claimant will receive an unjustified windfall of compensation.
6. As to the merits of the defence, the respondent asserts that it has paid the claimant all sums due by way of wages, notice pay and holiday pay.
7. The claimant opposes the application. The respondent should not be given more time simply because it missed the deadline. The claimant does not find it credible that the respondent did not receive notice of claim 2. The claimant has evidence to support his claim and his claim would not have been necessary had the respondent met its obligations towards him. The claimant is the only party who has suffered loss.
8. I am satisfied that the respondent was not aware of claim 2 until 28 January 2021. I have had sight of emails from the respondent's representative to the Tribunal in October and December 2020 and January 2021 asking to be sent a copy of the ET1 and notice of hearing for claim 1. I have not been able to inspect the files as the Tribunal premises at Victory House have been closed due to maintenance issues, but it seems to me that there has been some administrative confusion with these claims. The respondent acted promptly when it became aware of claim 2, providing a draft response the same day, albeit with some confusion about whether it was dealing with claim 1 or claim 2.
9. The claimant will not suffer prejudice by having his claim fairly tried on its merits. However, the respondent would suffer prejudice in being barred from defending the claim. The respondent has set out a defence to the claim which can be challenged by the claimant in cross examination at a hearing.
10. I find that the interests of justice are best served in this case by extending time so that the respondent can defend the claim and I allow the respondent's application for an extension of time.
11. I have made orders for the parties to prepare for the final hearing and a further preliminary hearing is not necessary.

Employment Judge Smailes  
30 July 2021

Sent to the parties on:  
31/07/2021

For the Tribunal Office

## **INFORMATION ABOUT HEARINGS AT CENTRAL LONDON EMPLOYMENT TRIBUNAL**

These instructions do not replace any specific case management orders which have been made in your case and should be read alongside Presidential Practice Direction [Click here](#) and Guidance [Click here](#) on remote hearings and the booklet “The Hearing – guidance for claimants and respondent”. See also <https://www.gov.uk/guidance/going-to-a-court-or-tribunal-during-the-coronavirus-covid-19-outbreak>.

**During the next few months hearings will be by video unless it is specifically agreed that they will be in person. If you have access to the internet it is usually possible to participate in a video hearing. Our experienced staff will assist you to join the hearing and you will be given time to sort out any technical problems. You will not be penalised for technical problems outside your control but you will be expected to make every effort to enable the hearing to go ahead if, in the assessment of the tribunal, it remains in the interests of justice for it to do so.**

**Please do not telephone the tribunal, please email instead:**  
[londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk)

### **TELEPHONE AND VIDEO HEARINGS**

#### **In all cases:**

1. No later than five working days before the hearing you are to send the tribunal an email with the case number and date and time of your hearing in the subject line confirming that you are ready to proceed or asking for a postponement, with reasons. The email must:
  - a. Provide names and email and telephone contact details for both parties
  - b. For a preliminary hearing for case management, attach a small file of papers which will normally contain: ET1, ET3, any case management orders, any applications and the agreed agenda.
  - c. For preliminary hearings where there is to be a determination of an issue, final hearings and remedy hearings, attach the agreed bundle or a file of papers (containing the ET1, ET3, any case management orders and the documents relevant to the issues being determined) and any witness statements. Alternatively you should supply a link to a website where the bundle can be found.
2. The parties must agree between themselves who does this, unless one party has been ordered to do it. If agreement cannot be reached both sides can email documents to the tribunal, but this should be avoided.

The documents should be provided electronically as pdf files which are rendered text readable.

### **Telephone Hearings**

The parties will normally be contacted by email before the hearing, with specific joining instructions for a telephone conference call. If the judge decides to conduct the call as an internet-based audio meeting or by video, they will provide joining details for that. If the parties do not receive an email in advance with such joining instructions, they will be contacted by telephone (on the numbers supplied in accordance with 1 a. above) by the tribunal at the start time for the hearing. The call may come from a tribunal clerk or from the judge in person. Parties must therefore be ready by the phone at least 5 minutes before the hearing start time ready to start the hearing on time.

## **Video Hearings**

### ***What you will need for a Video Hearing***

1. You will be able to attend using any internet enabled device with a camera, microphone and speakers. Although this includes a mobile phone, we recommend a laptop, PC or tablet is used.
2. You will need to be in a private quiet area so that background noise and interruptions are kept to a minimum and you can hear everything. You may wish to use headphones and a microphone.
3. You must ensure that you have a good internet connection. This means a download /upload speed of 2mb. You can test your internet speed by searching 'Internet speed Checking' online. The best browser is Google Chrome, please make sure you download it.
4. If you are logging into the internet via your organisation's virtual private network (VPN), please check with your organisation's IT support that your internet access protocol and security settings will not cause problems with accessing the hearing.
5. You will be sent joining instructions in advance of the hearing (usually the afternoon before the hearing begins).

### ***What you will need during the hearing***

6. You (or your legal representatives) will need to have access to the same written materials that have been sent to the tribunal for the purposes of the hearing. You will either need electronic versions of the documents, which you can view on a separate or split screen at the same time as the hearing is on screen, or hard copies.
7. If you have a legal representative, you must agree how you will communicate confidentially during the hearing. You will not be able to speak quietly to each other or pass notes as you would at an in-person hearing.
8. As with an in-person hearing, you should not eat or drink during the hearing, other than cold water.
9. You should dress as if you were attending an in-person hearing at the tribunal. You will be on screen during the entire hearing.

### **Witnesses**

10. All witnesses (including the claimant) must have access to:
  - their own witness statement
  - the witness statements of all other witnesses (as they may be questioned on these)
  - the bundle or file of documents
11. In all cases, the written materials used by the witnesses must be identical to the version which the tribunal has. They must be clean copies without any markings, highlighting, notes or bookmarks. **If you are representing yourself, you will need two copies of the written materials – a clean copy to use while you are giving evidence and a marked up copy you can use at other times.**
12. As with the parties, witnesses will either need electronic versions of the documents, which they can view on a separate or split screen at the same time as the hearing is on screen, or hard copies.
13. You should ensure, unless agreed otherwise with the tribunal, that witnesses are available for the whole of the hearing time, as the exact time they are needed will not be known until the hearing starts. They will usually be released once they have given their evidence. Witnesses can attend and watch the hearing when not giving evidence
14. Before giving evidence, witnesses may either give a non-religious affirmation or swear a religious oath. If a witness intends to swear on a holy book they should try and have one available at their location if possible. They can also choose to swear a religious oath without a holy book. You should email the tribunal no later than **5 days before the hearing** to indicate which oath cards should be prepared for your witnesses. You do not need to copy the other party or parties in when sending this email. The tribunal can send copies of the oath cards on request so that witnesses can select from these.
15. Witnesses should be in a private quiet area when giving evidence so that background noise is kept to a minimum and they can hear everything.
16. Witnesses cannot speak to anyone while giving evidence. No-one should try and communicate with or signal to a witness from off camera. They should be alone in the room in which they are giving evidence. All other applications and browser tabs on the witness device must be turned off along with the notification function. The witness must turn off all other devices.

### **Members of the Public**

17. Members of the public can obtain the access details for public video hearings by emailing [centrallondonETpublicaccess@justice.gov.uk](mailto:centrallondonETpublicaccess@justice.gov.uk)
18. Members of the public are entitled to inspect copies of any witness statements that are not read out during the hearing. They may also be entitled to see other written



materials prepared for the hearing. It will be for the judge conducting the hearing to exercise discretion to determine whether and to what extent documents will be made available.

19. You should bear the public access principle in mind and avoid including irrelevant confidential information in the file or bundle of documents. You should also let the tribunal know if you have any concerns about privacy or confidentiality.

### **JUDICIAL MEDIATION**

Mediations are usually conducted by video. Orders will have been made at a preliminary hearing for the preparation of schedules and a file of documents in electronic form. You should expect the judge conducting the mediation to contact by email a few days before the mediation day in order to arrange which video platform will be used and how the file of documents should be provided.

### **OVERRIDING OBJECTIVE**

In accordance with the overriding objective (see the Employment Tribunals Rules of Procedure 2013, rule 2), the parties are under a duty to co-operate in assisting the Tribunal to do justice to their dispute. They must try by every practical means to resolve procedural differences sensibly through private dialogue. **This duty is all the more important in current circumstances where the Tribunal's administrative and judicial resources are severely depleted.**

If, despite the above, it is strictly *necessary* to contact the Tribunal, the parties are asked not to telephone because there are very few staff available to answer calls but to communicate by email, to which it is usually possible to respond quite promptly: [londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk)

**IN PERSON HEARINGS (as from 19 December 2020 Victory House is closed to the public but it is hoped that it will re-open in May 2021. The information below applies to in-person hearings at other venues and Victory House when it re-opens)**

### **Hybrid hearings and Presidential Guidance**

As set out in the Presidential Practice Direction [Click here](#) and Guidance [Click here](#) on remote hearings it is possible to set up what are known as "hybrid" hearings where some of the participants are present at the tribunal building and some are joining remotely. Applications will be considered sympathetically subject to the tribunal's space and technical limitations; where parties can provide their own equipment many configurations are possible. London Central's information sheet on giving evidence remotely is at the end of this sheet. Also please note that for practical reasons the local arrangements set out below apply as variations from the Presidential Guidance.

Victory House is open to the public but the number of hearing rooms in the building which can be used is limited. This means that it may be necessary to contact you the day before the hearing to tell you that your case is postponed. Occasionally it will be possible to put a case on a "reserve list" (you should NOT attend the tribunal if you are

on the reserve list). If you settle your case, or wish to apply to postpone, you should please inform the tribunal as soon as possible so that the hearing room can be re-allocated: [londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk)

Public safety is HMCTS's first and paramount consideration. Do not come to the Tribunal if you have any Covid 19 symptoms at all either on the day of the hearing or in the period of 14 days before the hearing. This also applies to any witness who has any symptoms. Instead you must email the Tribunal office to explain why you or a witness cannot attend.

### **Arrangements for hearings at Victory House**

Subject to the above, please note the following:

- The standard rules on social distancing are being applied in the courts and tribunals and you must make sure that you observe them. The rules apply to you when you are waiting to go into the building; on going through the security checks to enter the building; whilst you are waiting inside the building and once you enter the courtroom for your hearing.
- HMCTS has made the following announcement on face coverings: "From Monday 27 July 2020, we're encouraging all court and tribunals users to wear a face covering in our buildings in England unless they have valid reason not to. This minimises the coronavirus risks throughout our buildings."
- A limited number of hearing rooms will be in use, enabling the parties to have one waiting room per party.
- Rooms in use will have their windows open or fresh air circulating by means of air conditioning.
- Hearings will start at 10.30 a.m. to enable participants to travel off peak. Parties, witnesses and representatives should attend not less than 30 minutes before the listed start time.
- Hearings will end no later than 4.30 p.m.
- Frequent breaks will be provided.
- All toilets normally available to the public will be open, operating on a 'one out, one in' system.
- Hand sanitizing materials will be available on all floors.
- The Tribunal cannot supply drinking water. The parties should bring their own.
- More detailed arrangements (including whether and, if so, when, face coverings are to be worn in the hearing room) will be discussed with the judge at the start of the hearing.

### **What is required of the parties**

- Bundles of documents on the witness table should either be handled wearing gloves or electronic versions, with a tablet to read them on, should be provided by the parties. The covers of bundles, tablets and other equipment should be wiped with a sanitising wipe after each use.
- Hard copy statements and bundles should be brought on the day of the hearing for the Tribunal's use in accordance with the standard directions already issued, with an additional copy for observers. These must be copied three days in advance of the hearing and quarantined.
- Given the precautions necessary during the pandemic a party is not entitled to bring additional documents to the tribunal on the day of the hearing to hand to the judge – anything that a party wants to show a judge must either be in the bundle or emailed to the tribunal and your opponent beforehand.
- In addition, digital copies of the witness statements and bundle must be sent by email to the Tribunal at [londoncentralet@justice.gov.uk](mailto:londoncentralet@justice.gov.uk) at least five working days before the hearing.
- A witness who wish to give evidence on oath should bring their own holy book with them.
- Since space is restricted, parties should limit numbers attending so far as possible. If necessary, witnesses may be asked to remain in the waiting room until they are called to give evidence.

[Whenever you email the tribunal you must always copy in the other parties unless you have a good reason not to, in which case you must explain that reason. You should also include your case number and any hearing date in the subject line of the email.](#)

**April 2021**