



# EMPLOYMENT TRIBUNALS

## Claimant

Ms Premila Shakespeare

v

## Respondents

(1) Harris Federation  
(2) Joanne Taylor

**Heard at:** Bury St Edmunds (by CVP)

**On:** 30 September 2021

**Before:** Employment Judge KJ Palmer (sitting alone)

## Appearances

**For the Claimant:**

In person.

**For the First & Second Respondents:**

Miss M McGee (Counsel).

## JUDGMENT

1. It is the Judgment of this Tribunal that the respondents' application under rule 71 of the Employment Tribunal Rules of Procedure for a revocation of the Rule 21 Judgment in this matter succeeds. The Judgment is revoked.
2. The respondents' application under rule 20 also succeeds and time is extended to validate the ET3 filed on behalf of the first and second respondents on 16 July 2021.
3. There shall be a closed preliminary hearing by telephone to consider case management issues going forward at 10.00 am on 1 November 2021.

## REASONS

1. This is an application before me this afternoon for a Reconsideration of a Rule 21 Judgment pursued by the first and second respondents. I had before me a helpful bundle which had been electronically sent to the administration running to some 180 pages and I was also blessed with having the tribunal file in front of me. The claimant appeared in person and made erudite submissions on her own behalf. The first and second respondents were represented by Miss McGee of Counsel.

2. There was a little confusion at the start of today's hearing as Miss McGee had not come into the CVP room and the reason for this was apparently that she had not been sent the relevant CVP dial in details to enable her to attend. I would just like to make it clear that it is evident now from documents that I have seen that DAS Insurers and Miss McGee were clearly indicated as being on the record for the first and second respondents pursuant to a letter dated 24 September 2021 and they replaced the respondents former solicitors who indicated on the same day that they were no longer instructed. So going forward let the tribunal's file reflect that the respondents representatives are DAS as per the details on the letter of 24 September 2021, hopefully there will be no further difficulties.
3. The application which I have to consider today is pursuant to the presentation of a claim by the claimant and subsequently the failure of the respondents to file a response. The claimant pursues claims in this matter for direct and indirect discrimination on the basis of the protected characteristic of sex, harassment on the basis of the protected characteristic of sex and on the face of it potentially unfair dismissal although that may fall to be determined in due course. Proceedings were issued and sent out by the tribunal on 17 March 2021. The respondents accept both in an application made by their former solicitors and in submissions put before me today by Miss McGee that those proceedings were received on 23 March. The due date for the filing of the ET3 pursuant to that service was 14 April. On 24 March the Head of HR at the first respondent forwarded the documentation and the claim to the respondents insurers who I believe were DAS Insurance. Sadly however on 27 March the first respondent suffered a significant cyber-attack which severely disrupted the first respondent's digital capabilities and email for some considerable amount of time, possibly up to 8 weeks and also at the same time on 31 March the Head of HR at the first respondent resigned. As a result no communications were able to be entered into during the period of the cyber-attack and further it seems likely that the Head of HR who had resigned and left did not brief anyone on his departure about the proceedings which had come in.
4. Therefore I accept that the respondents were then in a difficult and did not know of these proceedings until they received the Rule 21 Judgment on 30 June 2021. Thereafter they instructed the first respondent's first representatives who wrote to this Tribunal on 9 July seeking this application that is before me today. They then instructed those solicitors to produce an ET3 and that draft ET3 was filed with this Tribunal on 16 July 2021. In that draft ET3 the respondents make it clear that they refute the allegations of the claimant and they go into some detail as to why that is.
5. Originally this hearing today was set down as the remedy hearing pursuant to the Rule 21 Judgment but subsequently pursuant to the application from the first respondent's original solicitors on 9 July this hearing was converted to a hearing to determine the application under rule 71 and the application under rule 20 of the Employment Tribunals Rules of procedure to extend time to validate the ET3. Thereafter if unsuccessful this hearing would take the form of a remedy hearing.

6. So I have to consider rule 71 of the Employment Tribunals Rules of Procedure and that is an application by a party to set aside or revoke a Judgment. In this instance I have to take into account the sequence of events which have been put before me by Miss McGee, she says that it is for reasons beyond their control that there was a significant delay by the respondents in filing a draft ET3 on 16 July. Certainly there were some unusual circumstances which led to the late filing of that ET3 and of course it was after the Rule 21 Judgment had been issued when the file had gone before an Employment Judge pursuant to the failure of either respondent to lodge an ET3.
7. Dealing with the submissions I heard, I was impressed by the submissions made by the claimant as she broke down the issues that I have to consider in a rule 71 application rather well. She broke it down into three categories. I do have to consider what the merits of the potential claims are that I am considering and I will come back to those shortly. She then addressed me on how promptly or otherwise the respondents had dealt with these proceedings when they became aware of them and then thirdly and probably as important as any the level of prejudice that would be suffered by either party in the granting or not granting of these applications.
8. Looking at the delay which took place and how promptly the respondents dealt with these proceedings once they came to their attention, it is a balancing act for me to consider. I do have to consider that there was a significant delay in the filing of the ET3 and lodging of the application. However, it does seem to me that in these particular circumstances there was almost a perfect storm which visited upon the first respondent and made life very difficult for them in dealing with these proceedings. Yes, they accept that they received them on 23 March and then forwarded them to their insurers but thereafter they were hit by the major cyber-attack which affected their digital and IT capabilities for some time and their Head of HR left leaving them somewhat in the lurch.
9. In terms of the merits, the claimant advances an argument that the merits of the respondents' defence are very limited because she says that everything they say in their ET3 is based on a lie and she goes through some of the issues which she says would be exposed in terms of the explanation that has been set out by the respondents. However, it is not for me to determine those issues today. It seems to me that the respondents do have a fulsome argument which they would like to have heard before a tribunal and it may be that that argument fails but it will only be determined whether it succeeds or fails once evidence has been heard and properly sifted and balanced against evidence which no doubt the claimant will give. I am in no position to make determinations on those issues today and cannot make findings of fact without hearing the evidence. It does seem to me that on the merits and on the face of it the respondents have set forward a reasonable argument in their ET3 which merits a tribunal ventilating those arguments in evidence.

10. In terms of whether the respondents acted promptly, on balance I think they acted as promptly as they could reasonably be expected to do in the circumstances in light of the events which befell them and that leaves me to consider the level of prejudice visited on both parties in light of my granting these applications or refusing them. I do not take lightly the fact that the claimant sits in a position where she has pursued a claim and has on the face of it received a judgment and that to have that judgment revoked or set aside will create difficulties for the claimant in pursuing her claim. However, in terms of the timings in this case we are still relatively early in the process and the delays to the claimant of my setting aside this judgment will be significant but they do not in my judgment outweigh the prejudice that would be visited upon the respondents if I refused this application and therefore on the basis of the reasoning that I have set out I grant the application of the respondents under rule 71 the Rule 21 Judgment is set aside and I also grant the respondents' application under rule 20 to validate the ET3 which was filed with the Tribunal on 16 July, I extend time to validate that 16 July submission and the case can now proceed on the basis of that ET3.
11. It will be necessary now for there to be a case management hearing to determine precisely what the claimant's claims are and to give directions as to a way forward in dealing with this matter. That case management hearing will take place by telephone and will take place at this Tribunal on 1 November 2021, notices and details will be sent to the parties in due course.

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Employment Judge KJ Palmer

Date: 06 October 2021

Sent to the parties on: 12 October 2021

For the Tribunal Office