



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)
LONDON CENTRAL

BETWEEN

Mr Andrei Bogdan Burzo

Claimant

-AND-

The Ealing Social Ltd

Respondent

Judgment

The Respondent's application by letter dated 22/12/2020 under rule 71 of the Employment Tribunals (Constitution & Rules of Procedure) 2013 that the (amended) judgment dated 24/9/20 above be set aside on reconsideration, and under Rule 20 for an extension of time for filing its ET3 and Grounds of Resistance to 22/12/20, is dismissed.

Reasons

1. Unfortunately there was a substantial delay before the Respondent's application was sent to me but when it was I made a case management Order signed on 3/9/21 in the following terms: *"If the Respondent wishes to still pursue its application then by 24/9/21 the Respondent is to serve on the Claimant by email and file by email to ..., (emails addresses set out) a witness statement of truth signed and dated by a director of the Respondent confirming the contents of the WLS letter dated 22/12/2020 and including full particulars of (i) the reasons for the delay from 23/9/2020 - (when R found out about the proceedings) and from 18/10/20 - (when R received the judgment) until 22/12/2020 (when the application was made) (ii) a full explanation of the means by which the Claimant was allegedly dismissed for redundancy on 20/3/20 and any documentary evidence which is to be relied on in that regard (iii) a draft ET3 and GOR and (iv) whether the Respondent wants the tribunal judge to hold a hearing to consider the application or whether he is content for the application to be determined on the papers."*
2. The difference between the parties is that the Respondent appears to suggest that the Claimant was expressly dismissed on 22/3/20 whereas the Claimant's judgment is based on the contention that he was not expressly dismissed but resigned in early June 2020. His judgment is based on pay accruing after 23/3/20.
3. The purpose of my making the above CMO was to find out whether the Respondent had any good reason for its delay in making its application, and whether it would be able to show that it did in fact carry out a dismissal on 22/3/20.
4. The Respondent purported to comply with the CMO by filing on 24/9/2021 draft Grounds of Resistance and a witness statement Mr D Shah dated 24/9/21 which fails to provide any reasonable response or explanation to questions (i) and (ii) above.
5. I am not satisfied that the Respondent acted promptly when it became aware of the judgment. It has failed to provide any details or documents to show that it did expressly dismiss the Claimant in March 2020
6. The Respondent asked for a hearing to pursue its applications but I do not agree to this - see Rule 20(3). The Respondent has already had a full opportunity to set out its arguments.
7. The leading authority on extensions of time for presenting a response, albeit under a previous version of the Rules, is the decision of the Employment Appeal Tribunal in Kwik

Save Stores Ltd v Swain and others [1997] ICR 49. Mummery J pointed out that time limits are laid down as a matter of law and are therefore requirements to be met, particularly in employment tribunal litigation which is intended to provide a quick, cheap and effective means of resolving employment disputes (“failure to comply with the rules causes inconvenience, resulting in delay and increased costs”). He then outlined the essential principles to consider in deciding whether to permit a response to be presented late: “*The explanation for the delay which has necessitated the application for an extension is always an important factor in the exercise of the discretion ... The tribunal is entitled to take into account the nature of the explanation and to form a view about it ... In each case it is for the tribunal to decide what weight to give to this factor in the exercise of the discretion. In general, the more serious the delay, the more important it is for an applicant for an extension of time to provide a satisfactory explanation which is full, as well as honest. In some cases, the explanation, or lack of it, may be a decisive factor in the exercise of the discretion, but it is important to note that it is not the only factor to be considered*”. ... “*An important part of exercising this discretion is to ask these questions: what prejudice will the applicant for an extension of time suffer if the extension is refused? What prejudice will the other party suffer if the extension is granted? If the prejudice to the applicant for an extension outweighs the prejudice to the other party, then that is a factor in favour of granting the extension of time, but it is not always decisive. There may be countervailing factors. If a defence is shown to have some merit in it, justice will often favour the granting of an extension of time ... That does not mean that a party has a right to an extension of time on the basis that, if he is not granted one, he will be unjustly denied a hearing. The applicant for an extension has only a reasonable expectation that the discretion relating to extensions of time will be exercised in a fair, reasonable and principled manner. That will involve some consideration of the merits of his case*”.

8. Whether an extension should be granted is essentially a discretionary matter for the Tribunal considering the case, weighing up the various relevant factors as above. Also, I must have regard to the overriding objective to deal with cases fairly and justly, including, so far as practicable, ensuring the parties are on an equal footing, but also avoiding delay, so far as compatible with proper consideration of the issues and saving expense.
9. Taking these factors, and all other matters submitted to me on behalf of the parties, into account, in the light of my findings above, and having reconsidered the matter, I find that the interests of justice are best served in this case by not extending time so that the Respondent can defend and I accordingly dismiss the Respondent’s application.

J S Burns Employment Judge
London Central
8/11/21
For Secretary of the Tribunals

date sent to the Parties: 09/11/2021