



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104968/2020 (V)**

**Heard on the Cloud Video Platform (CVP) on 26 November 2021**

**Employment Judge S Walker**

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**Mr A Edgehill**

**Claimant  
Represented by:**

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**Adcentiv Media Retail Limited  
t/a Vapourohm**

**Respondent  
No appearance**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The application for an extension of time to present a response and for reconsideration of the judgment issued on 21 December 2020 is refused.

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**REASONS**

1 The claim was received on 22 September 2020. It was sent to the address noted above on 24 September 2020. The date for a response to be received was 22 October 2020 (as set out on the letter serving the claim). No response was received.

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2 A judgment was issued in the claimant's favour without a hearing under rule 21 of the Employment Tribunal Rules of Procedure.

3 That judgment was sent to the respondent at the same address on 21 December 2020. The covering letter explained that there was a right to request reconsideration of that judgment and how a respondent, who wished to defend the claim, could apply for an extension of time to present a response.

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4 On 9 February 2021, the claimant applied for an Extract of the judgment for enforcement purposes and this was sent to the claimant's representative on 15 February 2021.

5 On 12 May 2021, the respondent made an application under rule 20 for an extension of time to present their ET3 and for the judgment to be set aside or for reconsideration of the judgment under rule 70.

6 The reasons given were that the respondent had received no papers whatsoever in this matter and it was in the interests of justice that they have sight of the allegations against them. They said that the first they were aware of the claim was when they received a letter from Sheriff Officers which, although posted on 31 March 2021 was not received until mid-April.

7 The application stated that the shop premises in Largs, where the claimant had worked, had been closed and checked only periodically. The respondent's accountants were located at 2 Victoria Place, Rutherglen and the respondent submitted that had they received any post for the respondent they would have forwarded this to Ms Goldie, the owner of the respondent, at her home address in Millport.

8 They also said they had an arguable defence to the claim. A draft ET3 was included with the application. This set out the respondent's defence which was that the claimant had not been willing to return to work, after being on furlough, because he had, by then, childcare commitments and that he was dismissed for refusing a reasonable management instruction to return to work.

9 The claimant, in response, objected to the application and submitted that a hearing was required to determine the application.

25 10 A hearing was listed for 11 October 2021 but that was postponed at Ms Goldie's request (and with no objection) due to the sad death of her mother.

11 The hearing was relisted for 26 November 2021. The day before the hearing, Ms Goldie contacted the Tribunal and set out a number of personal circumstances

relating to the health of family members which it is not necessary to narrate here.  
She said:

5                   *"I really feel I cannot defend this action as I'm mentally exhausted. I will say  
as an employer I was very good to Adam Edgehill, I gave him every  
opportunity to return to work with lots of messages to show this, under  
different circumstances I would fight this as it's untrue what he's saying. My  
business doesn't even have the money to pay for a lawyer which is  
heartbreaking after all the hard work that I've personally put into it however  
everything else that has happened personally with my family is far more  
important. I would have done absolutely anything for Adam and his family but  
after the pandemic Adam wanted to stay at home to look after his children  
which was fine and I tried to work with him asking him what hours he could  
do I hope all this explanation can put some light onto my situation."*

12           I directed that a letter be sent to ask Ms Goldie whether she was withdrawing her  
15           application for reconsideration (in which case the proceedings would come to an  
end with the judgment remaining in place) or whether she was asking for the  
hearing to be postponed.

13           She replied that she had not realised a postponement was possible and that is  
what she would like. The Tribunal replied that it would forward the request to the  
20           claimant's representative for comments and then consider the application. Ms  
Goldie was told that she would be required to provide medical evidence to support  
your inability to attend.

14           The claimant's representative objected to the postponement. He pointed out that  
while he was sympathetic to the respondent's situation, the open ended nature of  
25           her application means that there is no real prospect of the hearing taking place.  
He noted that it has been some considerable time since the dismissal took place  
and at each stage of proceedings the respondent has shown disregard for the  
process. He also noted that a postponement was granted at very short notice last  
month, to which the claimant agreed, and again has made an application at the  
30           last minute. This is consistent with their actions to this point. The claimant has  
adhered to all relevant processes to date and still he finds matters being

prolonged. He submitted that there comes a point when the respondent has to organise her affairs to participate in legal proceedings.

15 Having considered the circumstances, including the fact that this was simply a hearing about an extension of time for the response to be presented and not a full  
5 hearing on the claim, I considered that the postponement should be refused. This was communicated to Ms Goldie.

16 Ms Goldie did not attend the hearing and there was no representative for the respondent. There was therefore no one to give evidence to critical factual  
10 matters, such as the contention that they had not received any papers despite documents being sent to the registered office of the company which was that of their accountants. According to the respondent's own application, post received at that address would be forwarded to Ms Goldie. However the Sheriff Officer's letter does appear to have been received. The Tribunal needed to hear evidence  
15 about these matters to conclude whether or not the respondent had had notice of the claim. While not conclusive, this would have been an important factor in the consideration of whether the application would be granted.

17 Without that evidence, I did not consider I could grant the application and it is refused. However, I indicate to Mr McCourt, that it was possible that the  
20 respondent might make a further application for reconsideration or for an extension of time. It was clear that the respondent had an arguable defence to the claim which would require a hearing to determine. I suggested that it may be in both parties' interest to have a discussion and see whether matters could be resolved without further involvement of the Tribunal.

18 As matters stand, the Tribunal proceedings are at an end and the Judgment  
25 stands.

19 After the hearing, an email from Ms Goldie was brought to my attention in the following terms:

*This message was sent to Adam on Friday 26th June 2020. All messages were sent by either text or watts app.*

*Hi Adam, Can you be in the Largs shop Monday morning please. The shop will need a deep clean along with a stock check, we will then decide when to open fully. Masks, gloves and so on have been ordered. I will have a chat with you about going forward.*

5 *There is another 31 corresponding messages up until Monday the 20th of July 2020. Over three weeks trying to get Adam back to work whether full time or part time.*

*I really feel that this is all extremely unfair especially under the circumstances. The claimant was given 3 weeks to come back to work. With myself trying my utmost to work round him. I was a very good employer with Adam with a number of colleagues commenting on this. Over the years if he was off sick he was paid in full, he was never deducted for numerous days off to the doctor's concerning his back, thumb also days to cover child care. This past 18 months has been excruciating for businesses let alone with all the personal*

10 *problems I've had to deal with.*

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*Regarding Jim McCourts email saying I was granted a postponement at short notice last time, please accept my apologies for my mum dying also his comments regarding me organising my legal affairs again please accept my apologies for my brother being in high dependacy unit now also looking after*

20 *my husband who himself has been very unwell. I know this is all an inconvenience for most however for me it's all a bit more than an inconvenience.*

*Unfortunately I will not be available today. I felt at least I had to try and put something in writing.*

25 20 I don't consider this changes my decision above while, of course, I am sympathetic to Ms Goldie's difficulties. I still have no evidence about whether the respondent received the claim or the judgment. As noted above, it would be open to the parties to discuss a mutually agreeable alternative to enforcing the judgments and, should the respondent wish to renew either of their applications,

30 the Tribunal will consider how to proceed.

**Employment Judge: S Walker**  
**Date of Judgment: 26 November 2021**  
**Entered in register: 29 November 2021**  
5 **and copied to parties**