



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Jones

**Respondent:** Tecflo Limited

**Heard at:** Liverpool

**On:** 24 November 2021

**Before:** Employment Judge Aspinall

## **Representation**

Claimant: No appearance

Respondent: Ms Smith, Counsel

**UPON APPLICATION** made by letter dated 3 August 2021 to reconsider the decision to reject the response under Rule 19 Employment Tribunal Rules of Procedure Regulations 2013

# JUDGMENT

The judgment to reject the Response is revoked.

## Reasons

1. By a claim form dated 3 December 2020 the claimant commenced proceedings for automatically unfair dismissal having made a protected disclosure, ordinary unfair dismissal and breach of contract. The respondent was to have filed its Response Form by 1 February 2021 but did not do so.
2. An application for extension of time for filing the response came before me on 28 July 2021. I decided to reject the Response and it is that decision that I have now reconsidered under Rule 19 and revoked.
3. At the hearing today the respondent was represented by Ms Smith of Counsel. The claimant did not appear, Rule 19(3) provides that the application for reconsideration shall be considered at a hearing attended only by the respondent.
4. The claimant had written to oppose reconsideration and I had regard to its letter dated 10 August 2021.

5. I find that I erred at paragraphs 12 and 13 of my Decision at Preliminary Hearing on 28 July in finding that no application to extend time had been made. On reconsideration I find that an application for extension of time was made on 10 February 2021 by email from the respondent litigant in person to the Tribunal, but it was defective. It was made outside of the time limit which expired on 1 February 2021. Rule 18 provides that applications made outside of the time limit shall be rejected unless they are accompanied by an application under Rule 20. Rule 20 requires the application to set out the reason why it is requested and be accompanied by a draft Response Form and to be copied to the claimant.

6. I afford the greatest respect to EJ Slater who gave direction to the respondent, who was at that time litigating in person, by a letter dated 25 March 2021 as to how to make the application which had been made on 10 February 2021 compliant with rules 18 and 20.

7. The respondent then appointed solicitors on 30 March 2021 who on 13 April 2021 used the online Portal to submit a Draft Response Form. I find on reconsideration that as at 13 April 2021 there was a (defective) application and a draft Response at the Tribunal.

8. I erred in law on 28 July in failing to consider Rule 6 which deals with irregularities and non-compliance. It provides, so far as is relevant:

**A failure to comply with any provision of these Rules ... or any order of the Tribunal... does not of itself render void the proceedings or any step taken in the proceedings. In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include or any of the following -**

- (a) waiving or varying the requirement**
- (b) striking out the claim or the response, in whole or in part, in accordance with rule 37**
- (c) barring or restricting a party's participation in the proceeding**
- (d) awarding costs in accordance with rules 74 to 84**

9. On reconsideration I now consider rule 6. I find it would be unjust to reject the response as defective in circumstances in which the application for an extension of time was made by a litigant in person respondent within 10 days of the expiry of the deadline and a draft response form was submitted by the solicitors newly appointed by the respondent within 14 days of them being instructed.

10. I find that as at 28 July 2021 the claimant had had sight of a request for extension of time and draft response form. I ought not to have rejected the response and that decision is now revoked.

11. I note an error in paragraph 24 of the 28 July decision, reference to the respondent's costs application ought to have said the claimant's.

12. The Tribunal now needs to consider the respondent's application for an extension of time in which to lodge the response. I propose to extend time but note that whilst the claimant made submissions by its Counsel on 28 July 2021

and has made written submissions via solicitors dated 10 August 2021 it has not had the opportunity to be heard on this point following reconsideration. Accordingly, if the claimant wishes to object to my proposal to extend time it must write to the tribunal within 14 days of the date on which this reconsideration judgment is sent to it, setting out its request that it be heard at a hearing and copying the correspondence to the respondent.

13. I have listed an open preliminary hearing for case management to prepare this matter for final hearing. If the claimant objects to my proposal to extend time then the parties should attend that hearing prepared to deal with both the extension of time point and, as appropriate, any case management thereafter.

Employment Judge Aspinall

Date: 24 November 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
3 December 2021

FOR THE TRIBUNAL OFFICE