



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100699/2019

Held in Glasgow on 10 April 2019

Employment Judge: Robert Gall

Miss H Truesdale

**Claimant
In Person**

Ace Resurfacing Ltd

**Respondent
Not present and
Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the hearing on 10 April 2019 is postponed. A fresh hearing is set down for 29 April 2019 at 2 PM.

REASONS

1. This case called for a full hearing at Glasgow on 10 April 2019. The claim is undefended.
2. When the case called the claimant was present. She was prepared to proceed. Mr Quate was present for the company against whom the claim has been raised. No ET3 has been validly presented and accordingly there was, in strict terms, no appearance by the respondents as they had no locus to participate.
3. The position in the case is that the claim was presented by the claimant. It was served upon the respondents. The respondents had until 1 March 2019 to submit form ET3 confirming that the case was to be defended. At time of acceptance of the claim, a Case Management Preliminary Hearing ("CMPH") was set down for 10 AM on 10 April 2019.

4. The respondents did not however submit form ET3 before 1 March 2019. The claim was therefore treated as undefended. An Employment Judge converted the CMPH to a full hearing on 7 March 2019.

5. On 20 March 2019 the respondents submitted form ET3. The form was submitted out of time. In terms of Rule 18 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, a response made outside the time limit "*shall be rejected by the Tribunal*" unless either an extension of time application has been made under rule 20 and has been granted or the submission of form ET3 is accompanied by an application for extension of time for submission of form ET3. There was no such application for extension of time submitted by the respondents. Accordingly, in terms of Rule 18, form ET3 was rejected.

6. For reasons which are not clear, form ET3 as received was submitted to an Employment Judge on 1 April 2019. That day, the Employment Judge confirmed that the response should not be accepted as it was late and no application for an extension of time had been made. This was confirmed to the respondents by letter of 2 April 2019.

7. In terms of Rule 19 an application for reconsideration of the rejection under Rule 18 can be made. That must be made in writing. It must be presented to the Tribunal within 14 days of the date on which the notice of rejection was sent. In this case therefore, any application for reconsideration requires to be presented within 14 days of 2 April. The hearing therefore on 10 April falls within that 14 day period.

8. In those circumstances it seemed to me that the hearing could not proceed in the interests of justice given that an application for reconsideration could still be made within time at that point. It was unfortunate that it was not possible to alert Ms Truesdale to this before she travelled and attended the hearing on 10 April.

9. As mentioned, Mr Quate was present at Tribunal. I explained that the respondents had not submitted the response form and therefore could not participate in Tribunal proceedings at present. Mr Quate had received the letter of 2 April. He stated that he intended to apply for reconsideration of rejection of form ET3. He had instructed a solicitor. Although I considered whether Mr Quate could submit an application for reconsideration in writing at time of the CMPH, he did not offer to do that and I considered that the instruction of a solicitor by him meant it was more appropriate to await any communication from that solicitor. At present the identity of that solicitor is not known to the Tribunal.

10. It seemed to me that it was appropriate to set down a further diet of hearing. If an application for reconsideration is indeed made, and if it is granted, the hearing set down could then usefully be converted, I would anticipate, to a CMPH. At that point consideration could be given to the agendas submitted by both parties with any points in the claim and response being clarified, the issues being identified with witnesses, length of hearing and dates for the hearing also being discussed, together with arrangements in relation to documentation which would be before the Tribunal at the hearing. If however no application for reconsideration is made, or any such application is refused, the hearing could proceed. If there is a CMPH consideration might also be given to the terms of Rule 50 and a possible Restricted Reporting Order or Order for anonymity.

11. The date set for the hearing is **29 April 2019 at 2PM**. The Clerk to the Tribunals is requested to send a hearing notice confirming that to the claimant, copying it to the respondents for information alone.

Employment Judge: Robert Gall
Date of Judgment: 10 April 2019
Entered in register: 10 April 2019
and copied to parties