



EMPLOYMENT TRIBUNALS (SCOTLAND)

**Case No: 4100113/2019
Held in Glasgow on 9 April 2019
Employment Judge: Lucy Wiseman**

Mrs Iris King

**Claimant
In Person**

Singleton Park Care Home Ltd

**Respondent
Represented by:
Mr C Bennison -
Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided to grant an extension of time to allow the respondent's response to be accepted.

REASONS

1. This was a preliminary hearing to determine whether the respondent's late ET3 response should be accepted.
2. I heard evidence from Ms Susan Williams, Director and Mrs Catherine Jardine, Care Home Manager.
3. I made the following material findings of fact.

Findings of fact

4. The claimant presented a claim to the Employment Tribunal on the 8 January 2019 alleging she had been unfairly dismissed.
5. The claim was served on the respondent by letter of the 11 January 2019. The letter confirmed the respondent had to complete and return the ET3 response on or before the 8 February 2019.

6. Ms Susan Williams (Director), Ms Beth Williams (Director) and Mrs Jardine (Care Home Manager) met at the end of January to discuss the claim and frame the response.

7. A response was submitted online on the 8 February. Ms Susan Williams and Mrs Jardine noted a message acknowledging the response was displayed on the screen.

8. A letter dated 9 February (page 18) enclosing a hard copy of the ET3 response, was sent to the tribunal. No response or acknowledgement from the tribunal was received.

9. The respondent believed they had entered a response to the claim and they subsequently received notice of the date of hearing, and instructed Mr Bennison in connection with the hearing.

10. The tribunal office did not receive the online ET3 response or the hard copy response sent on the 9 February.

Discussion and Decision

11. The respondent had to enter a response on or before the 8 February 2019. The tribunal did not receive the online response or the hard copy response sent on the 9 February. The issue for the tribunal to determine today is whether time should be extended to allow the respondent's response to be received (rule 20 of the Employment Tribunal Constitution and Rules of Procedure Regulations 2013).

12. The tribunal, when considering whether to extend time, should have regard to the employer's explanation why an extension of time is required; the balance of prejudice and the merits of the defence.

13. I accepted the employer's explanation regarding the fact they met to discuss the claim and formulate the response, which was submitted online. The ET3 was not received, and there is no explanation for that beyond the fact that these things do happen.

14. I considered the fact the respondent did not receive an acknowledgement or response from the tribunal in response to their letter of the 9 February, should have alerted them to chase up their correspondence and ensure it had been received.

15. I next considered the balance of prejudice. I acknowledged the claimant has been prejudiced by the fact the hearing of her case has been delayed. However, the claimant will still have the opportunity to have her case heard in the future. The balance of prejudice lies with the respondent because if time is not extended, they will not be able to defend the claim.

16. I had regard to the merits of the defence. The respondent's position is that there was misconduct which justified dismissal.

17. I decided, having had regard to all of the above factors, to grant an extension of time to receive and accept the ET3 response.

Case management

The Hearing

18. This case is to be listed for a 3-day hearing. All of the witnesses and the respondent's representative live in the Dumfries area, and are keen for the hearing to take place in

Dumfries. I explained we would need to check the availability of the Sheriff Court in Dumfries.

19. Mr Bennison confirmed the respondent is available on the following dates:

- 19 -28 June;
- 22, 23, 29, 30 and 31 July;
- 2 - 6 September;
- 28 - 31 October;
- 1 - 13, 18 - 20, 25 - 29 November.
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20. The claimant is not available on the 28 June - 7 July.

21. Mr Bennison wished the tribunal to note that Beth Williams, who took the decision to dismiss, is currently unwell and not fit to attend a hearing.

22. I explained to the claimant that we would proceed to get the case listed for hearing, but if Ms Williams was not fit enough to attend, the respondent may seek a postponement of the hearing. I also explained that at some point, if Ms Williams remained unfit to attend a hearing, the respondent would need to decide how to proceed in her absence, because the hearing of the case could not be delayed indefinitely.

Documents

23. The parties are each to prepare a list of the documents they intend to rely upon at the hearing, and exchange those lists by the 24 May 2019.

24. The parties will have a period of 7 days in which to ask each other to provide a copy of any document on the list which they have not seen before.

25. Mr Bennison agreed to undertake the task of collating copies of all documents to be relied upon by the parties and producing a single folder of documents to be used at the hearing.

26. Mr Bennison will, 21 days prior to the hearing, provide the claimant with a complete set of the documents to be used at the Hearing.

Employment Judge: Lucy Wiseman
Date of Judgment: 16 April 2019
Entered in register: 17 May 2019
and copied to parties