

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102410/2017

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Held in Glasgow on 25 October 2017

Employment Judge: Iain F. Atack

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Mr D McCrindle

**Claimant
In Person**

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David Frazer

**Respondent
Not Present and
Not Represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the respondent's application for an extension of time is granted and the response, ET3, be accepted.

REASONS

Introduction

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1. This was a Preliminary Hearing to determine whether or not the ET3 response which had been lodged late should be accepted.

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2. The claimant appeared, representing himself but when the case called at 2pm on 25 October there was no appearance or attendance by the respondent. The clerk attempt to contact the respondent but was unable to do so. However, at approximately 2.15 the respondent contacted the Tribunal administration and spoke to the clerk. He advised that he had not

appreciated that a personal appearance was necessary and had thought matters would be dealt with on the basis of his written submission. No other explanation was given for his non-attendance.

3. The claimant was claiming notice pay, holiday pay and a redundancy payment. The respondent's defence as shown in the ET3 which was submitted is that he was not the claimant's employer alleging that a company, Notram Electrical Plumbing and Building Services was in receivership and that a company called Notram Ltd had ceased trading. He did not specify the relationship of either of those companies with the claimant
4. I decided, in terms of Rule 47, of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") that I would proceed with the Hearing in the absence of the respondent.
5. From the evidence led by the claimant and taking into account the ET1 and the information provided in the ET3 submitted by the respondent I made the following material findings in fact.

Facts

6. In his ET1 the claimant states that he was employed by Notram Electrical Plumbing and Building Services. At the Hearing he asserted that company was properly designated as Notram Electrical and Plumbing Ltd.
7. The claimant was advised he had been made redundant by a company called Clyde Coast 2 Ltd.
8. The claimant was not aware of any change in the name or identity of the employer.
9. It was his belief that the respondent and a Mr MacGregor had bought out the business of Notram Electrical and Plumbing. He had no direct evidence about any purchase or transfer of the business.

10. The respondent sent an email to the Employment Tribunal on 18 September 2017 advising he been on holiday since July and had only collected his mail at the preceding weekend. He stated he would fill in that the relevant forms as soon as possible and return them.

5 11. The ET3 was presented on 20 September 2017.

12. It was not presented within the 28 day period provided for in Rule 16 (1).

13. An Employment Judge treated the claimant's email and ET3 as being an application for an extension of time in terms of Rule 20.

Decision

10 14. In terms of Rule 20 the Tribunal has a discretion to extend the time limit for presenting the response. In considering the application for an extension I took into account the overriding objective, contained in Rule 2, to deal with cases fairly and justly. I also took into account the guidance given in the cases of **Kwik Save Stores v Swain 1997 ICR 49** and **Moroak t/a Blake Envelopes v Cromie [2005] IRLR 535**.

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15. It was regrettable that Mr Frazer did not attend the Hearing but on the information available it appeared that he had a reasonable explanation as to why he had not responded to the ET1 timeously due to his being on holiday. He did submit the ET3 fairly quickly after sending email on 18 September.

20 16. I also considered the balance of prejudice. If the request was refused Mr Frazer would be denied the opportunity of putting forward his defence and it is likely that a Judgment would be granted in favour of the claimant. I considered that if the defence was well founded then Mr Frazer would indeed suffer greater prejudice if the application was refused than the claimant would suffer if it was granted. If indeed Mr Frazer is not the claimant's employer then he could be made personally liable for something for which he would otherwise not have been liable.

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17. I also considered the merits of the defence. Those merits may have to be tested in a Hearing but taking the defence at its highest as pled I considered it would be in the interests of justice to grant the extension of time as otherwise the respondent could be held liable for actions which he was not responsible, if indeed he was not the claimant's employer.

18. Taking all these matters into account I decided to exercise my discretion and to allow the ET3 to be received.

19. Given the respondent's assertion that he is not and was not the claimant's employer and taking into account the claimant's assertion at the Hearing that Mr Frazer and Mr MacGregor were partners in the business which employed him, it would seem appropriate that a further Preliminary Hearing be arranged to decide the name of the correct employer.

Employment Judge: Iain Atack
Date of Judgment: 31 October 2017
Entered in register: 09 November 2017
and copied to parties

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