

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

Case No: 4104842/2017

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Held in Chambers at Glasgow on 26 March 2018

Employment Judge: Ms M Robison

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**Mr J McRoberts**

**Claimant**

**Written submissions**

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**BT Plc**

**Respondent**

**Written submissions**

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**JUDGMENT**

The judgment of the Employment Tribunal is that:

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1. the judgment of the Employment Tribunal dated 11 January 2018, issued to the parties on 15 January 2018 is revoked, and will be remade.
2. The respondent should provide a response to the claim within 28 days of the date of this judgment.
3. The respondent's designation is changed to BT plc.

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**REASONS**

1. The claimant lodged a claim in the Employment Tribunal on 2 October 2017 claiming that he had been unfairly dismissed by the respondent. The

respondent's details were stated in the ET1 form to be BT Glasgow, Dial House, Bishops Street Glasgow G3 8UE.

2. The respondent was advised by letter dated 4 October 2017 addressed as above that the claim was accepted by the Employment Tribunal.
- 5 3. No response was received by the Employment Tribunal from the respondent, and a hearing to determine the issues was fixed for 10 January 2018. The respondent was advised of the date of the hearing for information only, by letter dated 8 December 2017.
- 10 4. The final hearing took place on 10 January 2018. The claimant appeared to represent himself. No-one appeared for the respondent, although no-one was expected because the respondent had not responded to say they were defending the claim. The claimant gave evidence. Given that I heard no defence from the respondent, I issued an oral judgment, with reasons, at that hearing in the claimant's favour. A written judgment dated 11 January 2018 was issued on 15 January 2018 to both the claimant and the respondent.
- 15 5. The Employment Tribunal subsequently received an e-mail on 30 January 2018 from Geoff Cavender, of BT Legal, who stated that he represented the respondent. He stated that he had just been notified of a default judgment, but no ET1 claim form had been forwarded to him, and he speculated that it had been sent to one of their large buildings in Scotland.
- 20 6. Subsequently the Employment Tribunal received an e-mail dated 2 February from DAC Beachcroft Solicitors advising that they were instructed to represent the respondent in these proceedings, making an application for a reconsideration of default judgement (copied to the claimant).
- 25 7. That letter requested that the reconsideration be allowed, although out of time. The respondent explained why that the default judgment had reached the legal department late, and believed this to be because it was addressed to BT Glasgow, but no such entity exists, the correct name of the claimant's employer being BT pic; no individual addressee was named, it was sent to  
30 Dial house which is a contact centre with 9 floors and no receptionist to distribute mail. This also explains why the respondent did not receive the ET 1. As the respondent has had no opportunity to provide a response or set out their defence, it would be in the interest of justice for the judgment to be

revoked. They requested 28 days to provide full and proper response to the claim. They also requested that the reconsideration application be considered without a hearing. That letter was copied to the claimant.

- 5 8. The claimant wrote to the Tribunal an undated letter which received on 12 February in which he expressed concern about receiving the letter from DAC Beachcroft since BT had not contacted him to advise that they were authorised to deal with his case. He continued, "I would absolutely not want another hearing as I am satisfied with the decision the judge made. After all this time I feel they are simply trying to delay the matter even further in hope that I will eventually give up. As for BT not receiving the tribunal's letter, that matter was not in my hands and I am not responsible for their mail monitoring and receiving process which is inefficient. I followed the whole process as directed firstly by ACAS, then by Employment Tribunal service".
- 10 9. By letter dated 20 February, parties were advised that although the reconsideration application was received more than 14 days after the date on which the judgment was sent to parties, I had decided that it was in accordance with the overriding objective to extend the time limit. I did not however refuse the reconsideration application, but gave the parties a further 7 days to respond to the application, and to express views on whether the application should be considered without a hearing.
- 15 20 10. The claimant responded by letter dated 22 February, stating "I still feel that the wrongful address on the claim form was not my fault. I was told by an ACAS representative that as BT is such a large company, I was to state what part of BT my claim was against. I wrote to Dial House because that was where I worked for over 23 years doing the same job...I have never worked at BT's litigation team in Yarnfield Park and therefore do not recognise any need to mention then. Most people agree that because it is the duty of the employment tribunal team to set a tribunal date and request both parties to attend, the invitation, should have been addressed correctly by the tribunal office. After all you are a professional organisation who deals with these matters all year round. Nevertheless if you are insisting on another hearing for me to attend, could you please organise it as soon as possible as I find it stressful and I have had not wages for over 5 months".
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11. The respondent replied by e-mail dated 22 February stating, "the respondent contends that it would be manifestly unjust for the judgment, and award of compensation, to stand in circumstances where the respondent has not had an opportunity to respond to the claim for reasons beyond its reasonable control, although we have not seen the claim form we understand that the claimant's complaint relates to his dismissal by the respondent for capability reasons. The respondent contends that the claimant was fairly dismissed in both procedural and substantive terms, following a lengthy period of performance management during which he had been given ample opportunity to improve".
12. The respondent's representatives were of the view that a hearing was not required, and I understood that to be the view of the claimant, and therefore I have given consideration to the reconsideration request without a hearing, on the basis of the information supplied. Parties were advised of that decision, and of my provisional views.
13. I have taken into account the fact that the claimant has stated that the respondent is BT Glasgow, which is not the correct name of his former employer, and indeed does not exist as an entity. I have taken account of the fact that it was addressed to a contact centre with no central contact point for mail. The claimant says that he took the advice of ACAS and that he thought that the Tribunal should have known the correct name and address. The approach taken by the Tribunal however is simply to use the address that has been advised. No fault or blame is being attributed to the claimant for not properly identifying the respondent, but rather that fact is accepted as explaining why the respondent did not receive the ET1 claim form. I accept that is a valid and plausible explanation for the failure to submit a response.
14. I have also taken into account the respondent's contention that they have reasonable prospects of defending the claim, and the respondent's assertion that the claimant was dismissed on grounds of capability, which is a potentially fair reason for dismissal, having been the subject of performance management for two years and having been given a second chance to improve, as well as warnings and the opportunity to appeal. It would not be in the interests of justice to deny the respondent the opportunity for that

defence to be heard in the course of a hearing to determine the question whether or not dismissal was fair in all the circumstances.

15. It should be noted that, as previously advised, I stressed to the claimant during the original hearing that I thought that it was likely that the paperwork had not reached the respondent, and that explained why they had not responded, rather than any informed decision not to defend the claim. I warned him that there was a real possibility that the decision which was made would require to be revisited once it had been received by the correct department in BT. I explained that in my experience it was very unusual in circumstances such as these that a respondent such as BT would not put forward a defence to a claim such as this.
16. In all the circumstances therefore I revoke the decision which was made on 11 January 2018, which will require to be remade. The respondent will now be given time to lodge a full response to the claim. In due course another hearing will require to take place. Once the respondent has made their defence clear, the claimant would be well advised to seek legal advice to assist him to prepare for that hearing.
17. The name of the respondent should be amended to BT plc. The respondent has 28 days from the date of this judgment to submit the appropriate defence.

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Employment Judge: Muriel Robison  
Date of Judgment: 27 March 2018  
Entered in register: 12 April 2018  
and copied to parties

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