



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4104785/2017

Reconsideration Hearing held in Glasgow on 27th March 2018

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Employment Judge M Whitcombe

Ms K Anderson

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Claimant

Represented by:
Flanagan & Co Solicitors

BRGR

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Respondent

Represented by:
Ms J Barnett
(Consultant)

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RECONSIDERATION

Employment Tribunal Rules of Procedure 2013 Rule 19(3)

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1. It is in the interests of justice to reconsider the decision made under rule 18 of the Employment Tribunal Rules of Procedure 2013 ("the Rules") to reject the Response. The decision to reject the Response is revoked.

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2. I extend the time for presentation of the Response to 1st December 2017 under either rule 5 or alternatively rule 20 of the Rules, and the Response is therefore accepted.

3. A telephone Preliminary Hearing for case management will be arranged, with a time estimate of one hour.

4. Within 14 days the Claimant should write to the Tribunal and to the Respondent indicating whether or not she consents to the amendment of the Respondent's name to "Hot Coo Investments Limited", which the Respondent maintains is the correct name of the employer.

REASONS

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1. All references to "rules" or "the Rules" are to the Employment Tribunals Rules of Procedure set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

15 2. This is an application under rule 19(1) for a reconsideration of the decision of EJ Garvie to reject the Response under rule 18(1). EJ Garvie rejected the Response on the basis that it was late, that there was no explanation for that lateness and that no application had been made for an extension of time. In accordance with rule 19(3) only the Respondent attended the hearing today.

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3. It was not practicable for the reconsideration application to be heard by EJ Garvie herself and instead I determined it. There was no objection on the part of the Respondent, and strictly the issue appears only to arise in relation to reconsideration of a judgment under rules 70 and 72(3), rather than a reconsideration of a decision to reject a Response under rule 19.

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Background

4. On 28th September 2017 the Claimant presented a Claim Form to the Tribunal in which she brought claims of unfair dismissal, pregnancy and/or maternity discrimination and sex discrimination, together with additional claims for notice pay, holiday pay, arrears of pay and other unspecified breaches of contract.

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- 5 5. On 2nd October 2017 the Tribunal administration sent that Claim Form to the Respondent, stating the usual 28 day period in which to present a Response (see rules 15 and 16(1)). The deadline for submission of a Response was therefore 30th October 2017, a date also stated on that correspondence.
- 10 6. For reasons which are not clear from the Tribunal file, on 3rd November 2017 the Tribunal administration sent further similar correspondence to the Respondent at a slightly different address (526 Great Western Road rather than 529 Great Western Road). That correspondence stated a new deadline for submission of the Response of 1st December 2017, 28 days from the date of the letter. There was no hard copy on the Tribunal file, but there was one in the Respondent's possession.
- 15 7. It is not clear what communications with the parties might have generated that letter, but at my request members of the Tribunal administration have confirmed by consulting computer records that correspondence was indeed sent out on 3rd November 2017, just as the Respondent contends. It is also clear that an Employment Judge had not granted an extension of the period for presentation of the Response before that letter was sent, and that the letter of 20 3rd November 2017 was therefore misleading as to the relevant deadline, which remained 30th October 2017 unless and until extended in accordance with the Rules.
- 25 8. The position was therefore as follows.
- a) The time for presentation of a Response had not in fact been extended by an Employment Judge under rule 20(3), and the deadline remained 30th October 2017.
- 30 b) However, the Respondent received and reasonably relied on a letter from the Tribunal dated 3rd November 2017 implying that time had

been extended and stating a new deadline for the submission of a Response of 1st December 2017.

c) 1st December 2017 was also the date on which a Response denying all of the claims was presented to the Tribunal.

5 d) Having regard to the correct deadline, the Response was late. However, the Response would have been presented within time had the information given in the Tribunal's letter of 3rd November 2017 been correct.

10 e) Unfortunately, the ET file did not contain a hard copy of the Tribunal's correspondence of 3rd November 2017. Consequently, EJ Gan/ie could not have been aware of it or of the Respondent's reliance upon it when she decided to reject the Response.

15 9. I find that the Respondent's reliance on Tribunal correspondence stating a new (but incorrect) deadline for submission of the Response was both reasonable and blameless. It would therefore be in the interests of justice to revoke the decision rejecting the late Response, to extend the time for presentation of the Response to 1st December 2017 (the later of the two dates notified in correspondence from the Tribunal) and to accept the Response given that it
20 was presented on 1st December 2017.

25 10. In case it is suggested that the Respondent has not formally applied for an extension of time, I should make it clear that I treat the application for a Reconsideration as containing an implicit request for an extension of time under rule 20 if necessary. I would also extend time on my own initiative anyway under rule 5, because on the unusual facts of this case an extension of time gives effect to the overriding objective to deal with cases fairly and justly. The claims should be investigated on their merits and it would not be
30 just for the Respondent to be prevented from disputing them at a contested hearing.

Employment Judge: Mark Whitcombe
Date of Judgment: 11 April 2018
Entered in register: 11 April 2018
and copied to parties