



EMPLOYMENT TRIBUNALS
London Central Region

Claimant: Ms S Parkins

Respondents: 1. Barnet, Enfield and Haringey Mental Health NHS Trust
2. Ms A Smith
3. The Secretary of State For Justice (sued as HM Prison and Probation Services)

JUDGMENT

1. The name of the Third Respondent is amended so it reads as above.
2. The Third Respondent's application dated 20 May 22 under Rule 70/71 to revoke the judgment already entered against the Third Respondent on 21/4/22, and for an extension of time to present a Defence, is refused.

REASONS

1. The judgment was sent to the Third Respondent on 21/4/22 but the application under Rule 70/71 was not made until 20/5/22 which is outside the time limit in Rule 71. It is apparent from this that even after judgment was served, the Third Respondent did not respond efficiently and quickly.
2. Even if the application had been made in time, I would have refused it for the following reasons:
3. The history of this matter is summarised in the Reasons for the judgment signed by me on 21/4/22.
4. The Third Respondent's application reads in part as follows: *'On Monday the Government Legal Department was sent a copy of the Notice of Claim (dated 1 February 2022), ET1 and Particulars of Claim in this case, a copy of which was received by post on 2 February 2022 at HMP Wormwood Scrubs ("the Prison"). On 9 February 2022, the Prison's Deputy Governor (Dom Ceglowski) followed the usual practice when in receipt of a claim, which is to forward the Notice and Claim documents on to CSHR Casework ("CSHR"), who are contracted to provide administrative services for the Third Respondent. The Deputy Governor sent the original papers by recorded delivery to CSHR at its address in Wales. On the same date, the Deputy Governor emailed a general HR casework inbox, notifying them that he had sent a claim to CSHR for processing and that he wished to be kept informed of progress. ...A "signed for" delivery receipt was received from Royal Mail on 11 February 2022, ensuring the Deputy Governor that the papers had been received by CSHR. Although the signatory cannot be identified from this receipt, the Deputy Governor believed the original papers had been safely received by CSHR and would subsequently arrange for a HR Case Manager to be appointed and the Government Legal Department instructed. However, CSHR cannot locate the papers sent to them and for this reason, the Third Respondent failed to provide a Response within the relevant time limit or attend the hearing on 21 April 2022. At this hearing, due to the Third Respondent's failure to attend, a default Judgment was entered against the Third Respondent*

in favour of the Claimant.... Claims that are lodged in Tribunals outside London are generally sent to the employee's place of work and then forwarded on to the CSHR Team in Wales who arrange for a HR Case Manager to be appointed and the Government Legal Department instructed. We have had issues in the past where a number of claims from individuals based in London have gone astray, so an arrangement has been agreed with the London Central Employment Tribunal that all NOMS/HMPPS claims are to be copied to the CSHR Team in Wales. As the Third Respondent was added as a late party to this claim, this may be the reason why a copy was not sent to them directly....'.

5. The Claimant's submission dated 23/5/22 in response reads in part as follows: *"The letter (a reference to the application) outlines the process in which the paperwork was sent by Deputy Governor Ceglowski on 9th February 2022, which was signed for and received by CSHR Casework on 11th February. Governor Ceglowski also sent an email stating that the paperwork that had been sent. Given an email was sent, someone from the relevant department would have seen this email outlining paperwork was due to be received and could have communicated back to him after a period of time that it had not been seen/received in order for a HR Case Manager to be allocated. I had also communicated on at least two occasions to Deputy Governor Ceglowski and Governing Governor Frost that I was yet to receive a response and; had also emailed this to the ET to be provided with the response as it appeared myself and the representative for the first and second respondent had not received these. Furthermore, I communicated that the date of the hearing was 21st April following the Preliminary Hearing on 27th January 2022.*
6. I regard these points from the Claimant as cogent. This is not a case in which the papers went astray before service but a case in which they were properly served on the correct recipient but apparently forgotten about, lost or mishandled by the Third Respondent's agent, for whose negligence the Third Party must bear the responsibility. For that reason, any arrangement which the Third Respondent may have had for papers to be copied by the ET to CSHR (which arrangement I will assume for present purposes does exist,) is of little or no relevance. If CSHR loses or forgets about papers, it would make no difference if they had been sent to it by the ET or by Deputy Governor Ceglowski.
7. Furthermore, on the available information, it appears that having sent the papers on to CSHR, Deputy Governor Ceglowski did not follow the matter up, as he should have done, to ensure that they were being properly dealt with, notwithstanding the facts that (i) he would have known that he had had no response from CSHR (for example to take his instructions for the purpose of settling a defence) and (ii) the Claimant had provided him with numerous reminders and prompts which should have encouraged him to do so. These prompts included a warning given by the Claimant to Deputy Governor Ceglowski on 20/4/22 that the hearing was going ahead the next day. The latter was evidently happy to allow the hearing to go ahead regardless.
8. The application also makes the following submission: *"It would cause great prejudice if the Third Respondent were unable to contest the claims in this case which include a serious allegation of discrimination. Her Majesty's Prison and Probation Service is an executive sponsored body and, as such, it takes its obligation to promote equality very seriously. Claims of discrimination have the potential to undermine public confidence in the Service."*

9. While I do not wholly discount this submission, I do not give it much weight. It is unclear how the matter would become widely known to the public. If it did, I doubt that the public would be much surprised by a default judgment in these circumstances. On the other hand, if such a judgment is so prejudicial, then proper steps should have been taken to prevent it in the first place. This applies to all Respondents.

10. I note that the Third Respondent thinks it would have a good defence and I accept there would be no forensic prejudice arising from a revocation. On the other hand, it seems to be accepted or at least it is not disputed that the Claimant suffered racial abuse from a colleague whom she then had to carry on working alongside at the Third Respondent's premises, despite her complaints to her managers.

11. The other Respondents were represented by Counsel at the hearing on 21/4/22 and have already given notice that a costs application in relation to the hearing will be made against the Third Respondent if it is let back in.

12. The judgment is modest in amount (£5000) and is likely to be considerably less than the costs which would be incurred on all sides if the matter was allowed to proceed.

13. The leading authority on extensions of time for presenting a response, albeit under a previous version of the Rules, is the decision of the Employment Appeal Tribunal in Kwik Save Stores Ltd v Swain and others [1997] ICR 49. Mummery J pointed out that time limits are laid down as a matter of law and are therefore requirements to be met, particularly in employment tribunal litigation which is intended to provide a quick, cheap and effective means of resolving employment disputes ("failure to comply with the rules causes inconvenience, resulting in delay and increased costs"). He then outlined the essential principles to consider in deciding whether to permit a response to be presented late: *"The explanation for the delay which has necessitated the application for an extension is always an important factor in the exercise of the discretion ... The tribunal is entitled to take into account the nature of the explanation and to form a view about it ... In each case it is for the tribunal to decide what weight to give to this factor in the exercise of the discretion. In general, the more serious the delay, the more important it is for an applicant for an extension of time to provide a satisfactory explanation which is full, as well as honest. In some cases, the explanation, or lack of it, may be a decisive factor in the exercise of the discretion, but it is important to note that it is not the only factor to be considered". ... "An important part of exercising this discretion is to ask these questions: what prejudice will the applicant for an extension of time suffer if the extension is refused? What prejudice will the other party suffer if the extension is granted? If the prejudice to the applicant for an extension outweighs the prejudice to the other party, then that is a factor in favour of granting the extension of time, but it is not always decisive. There may be countervailing factors. If a defence is shown to have some merit in it, justice will often favour the granting of an extension of time ... That does not mean that a party has a right to an extension of time on the basis that, if he is not granted one, he will be unjustly denied a hearing. The applicant for an extension has only a reasonable expectation that the discretion relating to extensions of time will be exercised in a fair, reasonable and principled manner. That will involve some consideration of the merits of his case".*

14. Whether an extension should be granted is essentially a discretionary matter for the Tribunal considering the case, weighing up the various relevant factors as above. Also, I must have regard to the overriding objective to deal with cases fairly and justly, including, so far as practicable, ensuring the parties are on an equal footing, but also avoiding delay, so far as compatible with proper consideration of the issues and saving expense.

15. Taking these factors, and all other matters submitted to me on behalf of the Third Respondent, into account, and having reconsidered the matter, I find that the interests of justice are best served in this case by not revoking the judgment and not extending time for the defence, and accordingly I dismiss the Third Respondent's application.

J S Burns Employment Judge
London Central
2/6/2022
For Secretary of the Tribunals
Date sent to parties: 04/06/2022
