



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B A Wahla  
**Respondent:** HGA Accountants and Financial Consultants Ltd  
**Heard at:** East London Hearing Centre  
**On:** 10 June 2022  
**Before:** Employment Judge Russell  
**Representation:**  
**For the Claimant:** Mr M Firman  
**For the Respondent:** Ms K Barry

## JUDGMENT ON RECONSIDERATION

- (1) The rule 21 Judgment sent to the parties on 17 March 2022 is revoked.
- (2) An extension of time until 13 May 2022 is granted for the presentation of the Response. The Response is accepted.

## REASONS

1 By a claim form presented to the Tribunal on the 16 August 2021, the Claimant brought complaints of unfair dismissal, disability discrimination, for notice pay, holiday pay, unauthorised deduction from pay and other financial payments. In the claim form, the Claimant gave the Respondent's address as: Thanet House, 231-232 Strand, London, WC2R 1DA and gave the address at which he worked as 325-331 High Road, Ilford, IG1 1NR.

2 The claim was accepted and a notice of claim sent to the Thanet House address by letter dated 19 August 2021 which required presentation of a Response by 16 September 2021. That was proper service as Thanet House is the Respondent's registered office. A notice of preliminary hearing was sent to the parties, using the Respondent's Thanet

House address, on 24 September 2021. The Tribunal did not copy its letters to the place of work address in Ilford.

3 No Response was presented by the due date and, by a letter dated 18 January 2022, the Legal Officer informed the Respondent that a Judgment may be entered under rule 21. Again, the letter was sent to the Thanet House address and not to Ilford.

4 The Preliminary Hearing took place before me on 18 February 2022. The Claimant attended, represented by Mr Firman his legal advisor. The Respondent did not attend. I was satisfied that the documents had been properly served, as Companies House still showed Thanet House was the registered office, and decided on the evidence available to me that it was appropriate to enter Judgment under rule 21. It was not possible to decide remedy at the same hearing as there was insufficient information available and I decided to list today's hearing for that purposed. Given that two addresses appeared on the claim form and out of caution to ensure that the Respondent was able to participate in the remedy hearing, and in case the Respondent had not received the post sent to Thanet House, I directed that a copy of the Judgment also be sent to the Ilford working address. This was done on 17 March 2022.

5 On 23 March 2022, newly instructed representatives for the Respondent wrote to request re-service of the claim and set aside of the rule 21 Judgment on grounds that the Respondent had not received the notice of claim or ET1. As they did not have these documents, they were unable to send a draft Response.

6 By a letter dated 22 April 2022, the Respondent was advised that the documents had been properly served and therefore there would be no re-service. However, copies of the ET1, grounds of complaint, notice of claim and remedy documents were provided to the Respondent with an instruction that if they wished to apply for Judgment to be set aside and leave to present a Response out of time it must be accompanied by a draft Response and evidence in support of its assertion that it did not receive the claim, including details of arrangements to ensure appropriate action on correspondence sent to the registered office address.

7 In a letter dated 13 May 2022, the Respondent's representative provided a more detailed explanation of why a Response had not been presented in time. At the date of service of the claim, the Thanet House address was a satellite office not attended or used by the Respondent despite being its registered office. It had put in place arrangements for post received at Thanet House to be collected on a regular basis and forwarded, unopened to the Ilford address. The Ilford address is a shared address used by a number of firms, at the time these included both HGA Legal Services Limited and HGA Accountants and Financial Consultants Limited. HGA Legal was in the process of being wound up and, against Mr Ahmed's specific instructions, from at least July 2021 their post was being re-directed to another firm, Futures Solicitors Limited. In error, it is believed that post for the Respondent was also re-directed. Given the acrimonious relationship between Mr Ahmed (as director of the Respondent and HGA Legal), it is not possible to ascertain exactly what post was wrongly redirected. Mr Ahmed complained to Royal Mail about the unauthorised redirection and this was corrected by mid-September 2021. None of the Tribunal's correspondence had been received.

8 The application attached a detailed draft Response setting out the reasons why the claims are resisted. Firstly, it asserts that the Claimant does not meet the statutory

definition of disability set out in section 6 of the Equality Act 2010. Secondly, even if the Claimant were disabled, the Respondent did not have knowledge at the material time. Thirdly, it denies that there was any unfavourable treatment or discrimination of any kind because of or related to disability. Finally, the Claimant had been properly paid all moneys due to him, in part because there was a proper offset against a £3,000 loan.

9 I heard submissions today from Ms Barry and Mr Firman. In the course of Mr Firman's submissions, it became apparent that the Claimant does not accept as credible or plausible the explanation put forward by Mr Ahmed for the non-receipt of Tribunal correspondence. Accordingly, I required Mr Ahmed to confirm on oath the accuracy of the explanation provided by his representative in its letter and be subject to cross-examination. I found Mr Ahmed to be a credible and plausible witness and I accept his evidence. On balance, I find that despite being the registered address, at the relevant time, Thanet House received a very small proportion (possibly as little as 2%) of the Respondent's post as most clients used the Ilford address instead. Thanet House was largely used for correspondence with one particularly large client alone. The Respondent has put in place an arrangement where the secretary of one of its clients, a lady called Rosa, would collect the post from Thanet House either weekly or fortnightly and send it onto the Ilford address. This was an appropriate and proportionate arrangement given the low volume of post the Respondent received at Thanet House.

10 I also accept Mr Ahmed's evidence that there were difficulties receiving reliable postal deliveries during the Covid-19 pandemic. The reliability of the Royal Mail service at that time is a matter which the Tribunal is painfully aware of as it has arisen in a number of cases in the East London region. On balance, I find that there was an unauthorised redirection of post between July 2021 and October 2021 for a similarly named company at the Ilford address and it is plausible that some of the Respondent's post was also wrongly misdirected to Futures Solicitors Limited. The lack of specific detail of which items of post is not surprising given the acrimonious nature of the relationship between the Respondent and Futures Solicitors.

11 I had regard to the principles set out in **Kwik Save Stores Ltd v Swain** [1997] ICR 49, as approved and applied by Eady J in **Office Equipment System v Hughes** UKEAT/0183/16/JOJ. In exercising my discretion to consider extending time for a Response, I must take into account all relevant factors including the explanation or a lack of explanation for the delay and the merits of the defence. I must reach a conclusion objectively justified on the grounds of reason and justice, taking into account and balancing the possible prejudice to each party. If a defence is shown to have some merits in it, justice will often favour granting an extension of time but that does not mean that a party has a right to an extension just because they would otherwise be denied a hearing.

12 Dealing first with the explanation for delay, for the reasons given above, I have accepted that the Respondent did not receive the claim and relevant post when it was sent. As for the merits of the defence, I am satisfied that there is at least an arguable defence (without making any finding as to its strengths in the absence of adequate evidence to do so) such that there would be significant injustice to the Respondent if it were deprived of the opportunity to defend the claims, including the very serious allegations of disability discrimination.

13 There is inevitably some prejudice to the Claimant in revoking the rule 21 Judgment as the Claimant must prove his claim rather than just the remedy sought. However, I am

satisfied in the circumstance of the case that that is a windfall benefit. There is no great prejudice as the Claimant will still have the opportunity to put forward his claim in a fully contested Tribunal hearing. He will benefit from the opportunity to prove on the balance of probabilities, after a public hearing of the evidence, the allegations he makes against Mr Ahmed. If the claim is well founded, he will have the benefit of a public judgment and reasons for his success as well as a possible financial remedy.

14 For all of those reasons, and applying rule 70, I conclude that it is in the interest of justice to revoke the Judgment sent to the parties on 17 March 2022 and to extend time for the presentation of the Response.

15 The case management orders were uncontentious and effectively made by consent.

**Employment Judge Russell  
Dated: 27 July 2022**