



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4110531/2021

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Held in Glasgow on 23 November 2022

Employment Judge D Hoey

10 **Mr L Ramos**

Claimant

15 **Lady Coco Ltd t/a**

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant's application dated 10 November 2022 for a preparation time order against the respondent is refused, the application being lodged outwith the 28 day set out in rule 77 and it not being in the interest of justice to vary or extend the time limit.

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REASONS

Background

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1. This case has a long procedural history, having been raised in 28 July 2021. A hearing took place on 14 and 15 September 2022, with the claim being dismissed. An oral judgment was issued with written reasons being provided upon request. A preparation time order was granted against the claimant, with an oral judgment being given on 15 September 2022 and written reasons provided to the parties upon the claimant's request.
2. The judgment finally determining the proceedings was sent to the parties on 16 September 2022.

3. A preparation time order was granted in the respondent's favour. That judgment was sent to the parties on 21 September 2022.
4. On 10 November 2022 the claimant sent an email to the Tribunal with attachments. One of those attachments contains an application for a
5 preparation time order against the respondent.

The application

5. The claimant seeks a preparation time order against the respondent because
"the respondent misconducted by failing to comply with the two Disclosure
Orders: this of Judge MacLean dated 09 August 2022 and this of Judge Hoey
10 dated the 29 August 2022". The claimant states that he had to do additional
work in August and September 2022 as a result of the failure of the
respondent.

The rules and their application

6. In terms of rule 77 a person may apply for a preparation time order at any
15 stage up to 28 days after the date on which the judgment finally determining
the proceedings in respect of that party was sent to the parties.
7. As the judgment finally determining the proceedings was sent to the parties
on 16 September 2022, the claimant had until 17 October 2022 to make any
such application. The application was not made until 10 November 2022
20 (almost 8 weeks after the judgment was issued).
8. In terms of rule 5 the Tribunal is given discretion to extend or shorten any time
limit. Such discretion should be exercised judicially and in accordance with
the overriding objective, dealing with the matter justly and fairly.
9. In this case the conduct to which the application relates is said to have
25 occurred in August and September 2022. The claimant knew of the conduct
and its consequences at the time given it was him who had to deal with the
consequences of the conduct on which his application is based. The issue
was raised, in passing, at the Hearing by the claimant and he noted the
alleged failures of the respondent. No application for any order (or the

suggestion that an order was being considered or sought was raised when this was raised by the claimant or when the issue of a preparation time order against the claimant was being discussed).

- 5 10. The claimant is an articulate and intelligent person and is experienced in dealing with Employment Tribunal procedure. The rules relating to preparation time orders were discussed at the hearing.
- 10 11. The Tribunal takes into account the additional time the claimant would require to deal with the issues arising, including his other applications. It is recognised that this claim is not the only matter the claimant is dealing with in his life. That has to be balanced with the desirability of finality of litigation looking at matters fairly and justly, being fair to both parties and the impact of the interests of justice generally.
- 15 12. It is notable that the issue of the advert was dealt with at the hearing by reliance upon the advert the claimant had produced. The respondent had conceded that the terms of the advert relied upon by the claimant were the terms of the advert. The failure of the respondent to produce the advert therefore gave rise to no prejudice to the claimant given the fact the claimant had the terms of the advert upon which he relied.
- 20 13. In all the circumstances it is not in the interest of justice to extend the time limit to allow the application to be considered. The claimant had sufficient time to raise the matter within the time set out in the Rules. It is not in the interests of justice to allow an extension to the time limit in all the circumstances of this case.

Conclusion

- 25 14. I considered the overriding objecting in reaching my decision to ensure the decision taken was fair and just. That applies to both the claimant and the respondent since justice requires to be achieved for both parties. I have done so carefully.
- 30 15. Having considered the full factual matrix I have decided that it is not just to extend the time limit to allow the claimant's application to proceed, it having

been lodged late.

16. The application for a preparation time order is therefore refused as it was not lodged within the time period set out in the rules and it is not just to extend the time limit in all the circumstances.

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Employment Judge: D Hoey
Date of Judgment: 24 November 2022
Entered in register: 25 November 2022
and copied to parties