



EMPLOYMENT TRIBUNALS

Claimant: Mrs E Brier

Respondent: (1) Gradwell Communications Ltd
(2) Technology Solutions Group Ltd

Heard at: Leeds ET (hybrid attended and CVP)

On: 12 December 2022

Before: Employment Judge Armstrong

Representation

Claimant: In person (attending)

Respondent: Mr P Mahoney (director of both respondent companies) (via CVP)

JUDGMENT having been sent to the parties on 12 December 2022 and a request having been made in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the Tribunal provides the following

REASONS

Issues

1. There are two applications before me regarding a decision made by me at a rule 21 hearing (a hearing listed by the Tribunal after the respondent failed to respond to the claimant's claim) on 27 September 2022. The first is an application under Tribunal Procedure Rule 70 to reconsider the rule 21 judgment. The second is an application under rule 20 to extend time for the respondent to file a response. If I were to reconsider the judgment under rule 70 and set aside the judgment, I would need to consider whether to extend time to for the respondent to respond under rule 20, which has the automatic effect of setting aside the judgment in any event. Therefore, I deal with that application first as if it is granted, there is no need to consider the test under rule 70.

Evidence

2. I heard evidence from Mr Paul Mahoney, director of Gradwell Communications Ltd and the Technology Services Group. I heard evidence from the claimant, who had the opportunity to ask questions of Mr Mahoney. I also considered the documents filed by both parties in advance of the hearing.

Background and Findings of Fact

3. I limit my findings of fact to those issues which are relevant to the applications that I am dealing with today, and make no findings regarding the issues in the substantive claim.
4. On 30 June 2022 the claimant filed a form ET1, commencing claims of unfair dismissal and discrimination.
5. The notice of claim and notice of a preliminary hearing listed on 27 September 2022 is dated 26 July 2022. The court file records that this document was sent by post to Gradwell Communications Ltd, West Point, James Street West, Bath, BA1 2DA ('the Bath address'). This is the correct address for the respondent, as confirmed by Mr Mahoney in his evidence. Mr Mahoney says this document was not received by the respondent and neither was a copy of the ET1. He described the process that the respondent has in place at that address for dealing with post, and confirmed that to the best of his knowledge it is reliable and effective.
6. On 2 August 2022 the allocated ACAS conciliator contacted the respondent by email. I have seen a copy of this email. It includes the claim number in subject line and states that a claim has been issued. Mr Mahoney says he received this email but did not respond. I accept his evidence that he thought that the next step would be that he would receive a claim from the Employment Tribunal, and a notice of hearing.
7. On 20 September 2022 the claimant emailed the respondent, attaching a number of documents which she says are her evidence in this matter. Within the email, the claim number was referred to, but not the forthcoming hearing date. I accept Mr Mahoney's evidence that he thought this email was directed towards settlement discussions, and that he was still awaiting notice of the claim from the Employment Tribunal. The claimant says, and I accept, that another director of the respondent replied to her email stating that the matter was 'closed' as far as the respondent was concerned.
8. On 26 September 2022 the Employment Tribunal of its own motion issued an amended notice of hearing, amending the time of the preliminary hearing on 27 September 2022 to 2.00pm (as opposed to 10.00am) and the mode of hearing from telephone to video. This was generated following a referral to an Employment Judge who had determined that the matter should be listed for a rule 21 hearing, in the absence of any response from the respondent. The processing of this decision was delayed so that the notice was not sent until the 26 September 2022. The amended notice was sent to the claimant and received by her some time before the hearing the following day. It was also sent by post to the respondent at the Bath address, as well as to The Technology Group Ltd at an address in Leeds which is their correct address

(although the Technology Group Ltd was not in fact a party to proceedings at that point in time, the claimant's claim against them having been rejected by the Tribunal).

9. On 27 September 2022 the rule 21 hearing proceeded in the respondent's absence. I was satisfied that the respondent would have received the original notice of hearing, although possibly not the amended notice, but had failed to respond and had not attempted to contact the Tribunal at the original time of hearing that morning. I therefore considered it was in the interests of justice and proportionate to proceed with the hearing in their absence.
10. On 28 September 2022 the respondent received the amended notice of hearing dated 26 September 2022 by post at the Leeds address. Mr Mahoney promptly emailed the Tribunal to request information about the hearing the previous day and about the proceedings and asked what the respondent needed to do.
11. Mr Mahoney says and I accept that on 29 September 2022 he received by email the original notice of claim and notice of preliminary hearing.
12. On 30 September 2022 Mr Mahoney contacted the Employment Tribunal, stating that the respondent was aware of the claim via ACAS but had received no formal notice of claim or of the hearing, and attaching documentary information regarding a grievance raised by the claimant, and her appeal against dismissal. He requested a reconsideration of the decision made on 27 September 2022. The claimant objected to this.
13. On 12 October 2022 I gave directions listing the reconsideration application for a hearing on 3 November 2022, and for the respondent to send a draft response in advance of the hearing.
14. On 13 October 2022 the respondent contacted the Tribunal to request a copy of the claimant's ET1. On 17 October 2022 Mr Mahoney again contacted the Tribunal to repeat this request.
15. On 24 October 2022 the respondent made a formal application for reconsideration, for extension of time to file an ET3 response (attaching a draft), to remove Gradwell Communications Ltd from the claim on the basis it was not the claimant's employer, and to strike out the claim against Technology Solutions Group on the basis it was out of time (although in fact Technology Solutions Group was not a party to proceedings at that point).
16. The hearing on 3 November 2022 was postponed by consent to today.

Decision

17. I am satisfied that the respondent did not have notice of the claim, or the hearing on 27 September 2022 prior to that hearing, and their response ought to be accepted out of time. This is for the following reasons:

18. On the face of it, the respondent has an arguable defence to the claim. I make absolutely no findings or any indication as to the likelihood of it succeeding, but they have drafted a response and provided some documentary evidence which suggests that there is a response which could be argued before a tribunal and may be accepted.
19. I accept Mr Mahoney's evidence that the Notice of Hearing and Notice of Claim were not received by the respondent. They were only sent to the Bath address, which is the right address. It is only this letter which has gone missing and this does sometimes happen. I accept that there is a process in place for dealing with post at that address, as described by Mr Mahoney, because the Notice of hearing on 27 September 2022 was dealt with as soon as it was received. I accept, based on the fact it was posted on 26 September 2022, that this would have been received on 28 September 2022. The respondent acted quickly once aware of that hearing, applied for a reconsideration hearing, and engaged with this process, including chasing the Tribunal for a copy of the claimant's ET1 when Mr Mahoney's email of 13 October 2022 was not initially responded to. On that basis I do not accept the claimant's submission that the respondent deliberately ignored the claim.
20. I have considered the correspondence that was sent to the Leeds office – the only item that I can see that was sent there was the notice of 26 September 2022, so this would not have given the respondent notice in time to respond to the claim in time.
21. I have considered the ACAS email of 2 August 2022. This should in an ideal world have given the respondent pause for thought as to why they had not been notified of the claim. However, it was not unreasonable for them to assume that they would receive a copy of the claim from the Tribunal in due course.
22. I have considered the email that the claimant sent to the respondent on 20 September 2022 attaching her evidence. Mr Mahoney accepted that this was sent, and that it referred to a case number, but did not realise that it was in relation to a specific hearing, or her claim. I accept this evidence. Again, in the overall context of an employer who has responded once aware of proceedings, I am satisfied that they were still waiting to hear about the claim from the Tribunal. There was a response from another director to the effect that the matter is no closed but I do not consider that this means that they were deliberately not responding to the claim, rather it seems more likely that they were unaware of need to respond to the substantive claim at that stage.
23. The respondent says that Technology Services Group Ltd were the claimant's employer. The claimant is unsure who her employer was and does not agree to Gradwell Communications Ltd being removed from the claim. The respondent says there are time limit issues regarding Technology Services Group Ltd due to the dates of Early Conciliation. I have amended the claim under rule 34 of the Employment Tribunal Rules to include Technology Services Group Ltd as a respondent to the claim. It appears likely that there are therefore no time limit issues in this regard. However, there was limited

time to hear arguments on this issue today and it will be further considered at the Case Management Hearing if there are other time limit issues.

Employment Judge K Armstrong

Date: 13 January 2023