



EMPLOYMENT TRIBUNALS

Claimant: Ms J Walker

First Respondent: Real Life Oldham Limited

Second Respondent: Mr Tyler Caine Mullings

Heard at: Manchester Employment Tribunal (by CVP)

On: 27 February 2023

Before: Employment Judge Mark Butler
Mrs A Booth
Mr N Williams

Representation

Claimant: Mr B Culshaw (Solicitor)
Respondents: Ms D McGuire (Solicitor)

JUDGMENT AND REASONS

INTRODUCTION

1. This case went to final merits hearing on 19 October 2022. None of the respondents presented an ET3 in this case. The claims brought against the third respondent (who was still a party at that point) was dismissed on withdrawal. Whilst the claims brought against the first and second respondent succeeded.
2. The first and second respondent presented an ET3 on 06 January 2023, along with an application to extend time for presenting a response. Albeit unusual to receive a response after judgment has been entered, it is permitted within the Employment Tribunal Rules of Procedure.
3. The tribunal had sight of a short bundle of documents prepared by the respondent. And received a further short set of documents from Mr Culshaw on behalf of the claimant during the hearing. These additional documents extended to 9 pages and admitting and considering these caused no difficulties to either the tribunal or the respondent.
4. Mr Mullings produced a witness statement and a supplementary witness statement, and was cross examined on those.

HISTORY OF THE CASE

5. The claimant presented her claim form on
6. None of the respondents presented an ET3.
7. There was very little on file explaining why the respondents had not presented an ET3 in this case, save for an email from Mr Mullings on 21 July 2022. In that email to the tribunal, Mr Mullings explained the following:

My name is Tyler Mullings, my company is Real Life Oldham Ltd.

I have received correspondence from yourselves in regards to a claim made against my company,

I am late responding to this as I have been having personal problems over the last few months - we have just had our baby girl 10 weeks premature, prior to this we was in every day for monitoring and the last 2/3 months have been taken over from hospital trips all admin/work related tasks have been pushed aside.

I have tried to call repeatedly over the last few days to see what I need to do ?

We will be contesting Jolis claim and I wish to stand up and defend/explain my companies decision.

Please can you tell me what I need to do to proceed

8. The duty judge, Employment Judge Holmes, wrote to the claimant in response to this email on 06 September 2022 and explained the following:

Employment Judge Holmes directs me to inform respondent that it now needs to submit an ET3, setting out its case in response to the claims, and to apply to have it accepted out of time. That application should set out the reasons why the response was not filed when it was due, when the respondent first became aware of the claim and how, and what action it took once it was aware of the claim. A hearing may be necessary to decide whether to accept the response out of time, and evidence may have to be given.

9. There was no response by Mr Mullings to this direction from EJ Holmes. No ET3 was presented or any application to extend time was made in line with those clear directions set out by EJ Holmes.
10. The hearing commenced on 19 October 2022. Mr Mullings did attend the hearing briefly. When the judge explained to Mr Mullings that his involvement was limited due to there being no ET3 presented by him or on behalf of any of the other respondents, Mr Mullings explained that there were issues in his private life that had affected him to the extent that this impeded him from presenting a defence. It was explained to Mr Mullings that he could remain in the hearing if he wanted to but that his involvement would be dependent on permission from the tribunal. Or that he could choose to leave the hearing, present an ET3 along with an application to extend time. And that such an application will be considered if and when it is made.
11. An ET3 was presented on 06 January 2023, along with an application to extend time. That was the focus of this hearing.
12. Although extension of time is a matter that can be determined by a Judge Sitting Alone, if time was extended in this case then the tribunal would need to decide whether to reconsider the initial judgment. And although this was likely to follow

the initial decision (the two matters being intertwined and inseparable), it was decided that today would be considered by the same panel that heard the initial case.

13. Mr Culshaw accepted that if time was extended, then inevitably the initial judgment would be reconsidered and revoked. And he would not be seeking to make any further submissions on reconsideration after the determination of the extension of time point.

APPLICABLE RULE

14. The relevant rule dealing with application for extending time to present a response is Rule 20 of the ET's Rule of Procedures. This provides the following:

Applications for extension of time for presenting response

20.—(1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.

(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.

(3) An Employment Judge may determine the application without a hearing.

(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside.

15. Mr Culshaw took the tribunal to the Employment Appeal Decision in **Thornton v Jones** [2011] UKEAT/0068/11/SM. The tribunal also reminded itself of the principles contained within **Kwik Save Stores Ltd v Swain and ors** [1997] ICR 49, EAT.

CLOSING SUBMISSIONS

16. We heard closing submissions on behalf of both the respondent and the claimant. These have been considered when making this decision.

FINDINGS OF FACT

17. The Claimant had a particularly close relationship with his mum. She has various impairments, including COPD.
18. The claimant was dismissed on 02 November 2021.
19. Around Christmas 2021, Mr Mullings's mum suffered a serious health issue, which led her to having a heart attack. As a consequence she was placed in an induced coma. And remained in hospital until at least February 2022. This was a stressful time for the Mr Mullings.

20. The claimant presented a claim form to the tribunal on 03 February 2022. The notice of a claim was sent to the named respondents by letter dated 14 March 2022, and the named respondents were instructed that if they wanted to defend the claim then they had to present a response form by 11 April 2022.
21. Mr Mullings's mum lived with Mr Mullins when she left hospital, this being from around February 2022 until at least May 2022. He had caring responsibilities for his mum during this period.
22. Although the dates are not entirely clear, the tribunal accepts the evidence of Mr Mullings that alongside this difficult time his partner was going through a difficult pregnancy. This ultimately led to Mr Mullings' partner having to undergo an emergency C-section, with his daughter being delivered prematurely (at 31 weeks old). Mr Mullings's daughter was born on 21 June 2022. This was clearly a stressful time for any parent.
23. Mr Mullings's daughter remained in hospital for some time following birth, and was discharged from hospital on 08 September 2022.
24. Mr Mullings's has provided some evidence of issues that continued to affect his daughter up until at least 20 October 2022. Although we do note that the letter relating to that appointment of 20 October 2022 also records that there some ongoing matters. Mr Mullings's gave evidence, which the tribunal has no reason to doubt given the medical history of his daughter, that his daughter is still under medical care. With there being potential further medical interventions needed.
25. Mr Mullings had made contact with the claimant's representative by telephone on 20 July 2022. He raised matters concerning the premature birth of his daughter. He also explained that he was seeking to defend the claim.
26. Mr Mullings contacted the tribunal on 21 July 2022, and received a response from Employment Judge Holmes (see above) on 06 September 2022.
27. Mr Mullings did attend the tribunal hearing on 19 October 2022. Judgment was sent to the parties on 24 October 2022.
28. The claimant made an application to extend time to present a response form, along with a completed response form on 06 January 2023.

CONCLUSIONS

29. During the period when the respondents had notice of the claim and the time when a response form was presented, Mr Mullings has provided the tribunal with personal reasons that clearly affected him during that period, and must have dominated his time and thoughts throughout it. Not only did his mum fall ill, but him and his partner have gone through a difficult time before, during and following the birth of their daughter.
30. Although this is a significant period of delay in presenting a response to the claim, exacerbated by the fact that judgment on liability and remedy has already been handed down, the tribunal accepts that his is a reasonable explanation to the delays. There were perhaps periods where Mr Mullings could and should have turned his attention to the claim that was brought and ignoring such an important matter should not have happened, it is understandable in circumstances where his mind must have been on his family life.

31. Although Mr Mullings did have some involvement with his businesses during this time, the tribunal accept that this was with a view to ensuring that his businesses did not fail, as he needed to be able to provide for his family.
32. Turning to the matter of prejudice. The claimant will be subject to the obvious prejudice of having to present her claim once again. And she will suffer the unquestionable prejudice of the stress and anxiety of yet again having this claim still needing to be determined. However, these are the same matters that all claimants are subject to when bringing a claim. This must be balanced against, and we say the claimant's prejudice in allowing an extension of time is outweighed, by the prejudice to the respondents of not being able to defend a claim that they have wanted to throughout (shown by the email of Mr Mullins on 21 July 2022 and by him having attended the tribunal hearing on 19 October 2022), having a serious finding made against them and having a significant award made against them, in circumstances where they have not been able to put forward their case.
33. Turning finally to the merits of the defence. And this is where the tribunal must tread carefully to not assess the merits of the defence in knowledge of some of the evidence it has previously heard. The respondent clearly raises arguable matters that, if decided in favour of the respondent, will impact upon whether the claim succeeds or not. This includes, but not limited to, whether there was a genuine need to make a redundancy dismissal, what was done in selecting the claimant and whether the comments referred to in paragraph 9 of the particulars of claim were made by Mr Mullings.
34. Considering all the relevant matters in this case, this tribunal has decided that time should be extended for the respondents to present their response to the claim up until 06 January 2023. The response as presented on behalf of the first and second respondent has been accepted.
35. It remains the case that the claim as brought against the third respondent is dismissed on withdrawal. This revoking of the liability and remedy judgment does not affect that decision.
36. In these circumstances, the judgment of this same tribunal, dated 19 October 2019, save for the dismissal of the claim brought against the third respondent, is revoked.
37. The claims brought against the first and second respondent, the two remaining respondents in this claim, will start afresh with a newly constituted tribunal. I will have directions sent to the parties in due course.

Employment Judge **Mark Butler**
Date_01 March 2023_____

JUDGMENT SENT TO THE PARTIES ON
3 March 2023

FOR THE TRIBUNAL OFFICE

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