



EMPLOYMENT TRIBUNALS

Claimant: Mrs Amy Simpson

Respondent: DN Cafes Ltd

Heard at: Nottingham **On:** 24 April 2023

Before: Employment Judge Omambala KC

Representation

Claimant: In person

Respondent: Mr Staniland, Director

JUDGMENT

1. The Respondent's response to both claims received on 11 January 2023 is accepted.
2. By consent, the name of the Respondent is amended to DN Cafes Ltd.

REASONS

Background

1. The Claimant was employed as the general manager of a café. It is agreed that she was employed by DN Cafes Ltd. The Claimant started work on 28 August 2021 and was paid until 13 June 2022 although the Claimant did not attend work after 28 May 2022. An early conciliation certificate was issued on 2 August 2022.
2. The Claimant has submitted two claim forms. The first is dated 19 November 2022. The second is dated 3 December 2022. The Claimant alleges that the Respondent failed to issue her with pay slips, paid her late causing her to incur bank charges and other expenses. The Claimant also complains of unsafe working conditions and a failure to conduct risk assessments.
3. The deadline for responding to these claims was 10 January 2023.

Findings of Fact

4. The ET1 forms identified the Respondent's registered address, and the claims forms were sent to that address by the employment tribunal service on 12 December 2022. The Respondent states that the address its accountants' office address. The office was closed over the Christmas period and did not re-open until 3 January 2023 when the letter addressed to Mr Miller was passed on.
5. On 5 January 2023, a director of the Respondent Mr Jonathan Staniland, contacted the employment tribunal by telephone to explain that they had received correspondence which was incorrectly addressed to Mr Miller. They confirmed that the correct Respondent was DN Cafes Ltd, a limited company which employed the Claimant. The Respondent repeated this information in an email also dated 5 January 2023.
6. The Respondent completed its form ET3 and posted it on 5 or 6 January 2023.
7. The tribunal wrote to Mr Staniland on 6 January 2023. It told him that the deadline for filing a response to the claims was 10 January 2023. It also reminded him of the importance of copying the other party whenever the Respondent wrote to the tribunal.
8. The tribunal received the form ET3 on 11 January 2023. By letter dated 11 March 2023 the Respondent was informed that the response had been rejected because it was submitted late.
9. On 18 April 2023 the employment tribunal directed that the final hearing listed for 24 April 2023 be converted to a preliminary hearing to consider the following preliminary issues.

Discussion

10. The tribunal treated the Respondent's email of 14 April 2023 as an application to extend time for filing its form ET3. It acknowledged that the response was served a day late.
11. The explanations offered by the Respondent for the late filing were (1) that there was a delay in the claim forms being brought to its attention because they were contained in a plain envelope addressed to Mr Miller; (2) at the material time, there were significant delays in postal deliveries as a result of industrial action which impacted both on receipt of the claims and the tribunal's receipt of the response.
12. The tribunal considered and applied the guidance in Kwik Save Stores Ltd v Swain [1997] ICR 49.
13. It concluded that the Respondent's explanations for the lateness of the form ET3 provided an explanation for the delay.

14. It considered the question of prejudice to both parties. It determined that the Respondent would suffer greater prejudice by being denied relief than the Claimant would suffer if relief were granted. In reaching that conclusion the tribunal had regard to the fact that the Claimant stated that she would welcome the opportunity to respond to the matters raised in the defence and did not identify any specific prejudice which she would suffer if the Respondent was permitted to resist her claims. The tribunal also had regard to the merits of the case. The form ET3 appeared to the tribunal to raise issues which were arguable and ought to be considered at a final hearing.

Conclusion

15. The tribunal was satisfied that taking into account all relevant factors, the overriding objective and the representations made by both parties, it should exercise its discretion to extend time for the acceptance of the form ET3.

CASE MANAGEMENT ORDER

Employment Tribunals Rules of Procedure 2013 Rule 29

1. The final hearing will take place in person at **Tribunal hearing Centre, 50 Carrington Street, Nottingham NG1 7FG** on **Tuesday 13 June 2023**. The hearing will start at 10.00am. You must arrive 30minutes before the start time.
2. The hearing will last for **1 day**.
3. If you or anyone coming with you to the hearing has a disability that makes coming to the hearing or communicating difficult, please tell the Tribunal Office dealing with your case as soon as possible.

The Issues

4. It was clarified that the issues in the case were:

Breach of Contract:

- (1) Did the Respondent fail to pay the Claimant's wages on time?
- (2) Was that a breach of the Claimant's contract of employment?
- (3) How much should the Claimant be awarded in damages?

Section 8 Employment Rights Act 1996

- (4) Did the Respondent fail to provide the Claimant with itemize pay slips?
- (5) If so, should the tribunal make a declaration under s.12(3) of the Act?
- (6) Should the tribunal make any order under s.12(4) of the Act?

Counterclaim

- (7) Did the Claimant remove a refrigerator from the Respondent's premises?
- (8) Was that a breach of contract by the Claimant?
- (3) How much should the Respondent be awarded in damages?

Orders

The Claimant and the Respondent must comply with these Orders:

5. By no later than **2 May 2023** the Respondent must send to the Claimant and to the Tribunal further information in relation to its counterclaim.
6. By no later than **9 May 2023** the Claimant and the Respondent must send to each other copies of all the documents they have relevant to the claim. This includes documents relevant to financial losses. Documents include recordings, emails, text messages and social media posts. You must send all relevant documents that you have in your possession or control even if they do not support your case.
7. By no later than **16 May 2023** the Claimant and the Respondent must agree which documents are going to be used at the hearing. The Respondent must prepare a file of those documents and send a hard copy to the Claimant.

The file must have an index and page numbers. It must contain the Claim form and the Response at the front then the other documents that are going to be used at the hearing.

8. By no later than **30 May 2023** the Claimant and the Respondent must send each other copies of all their witness statements.

A witness statement is a document containing everything relevant to the issues in the case that the witness can tell the tribunal. Everybody who is going to be a witness at the hearing, including the Claimant, needs a witness statement. Witness statements should be typed if possible. They must have page numbers and paragraph numbers. They should set out events in the order that happened. If the witness statement refers to a document in the file, it should give the page number of the document.

9. The Claimant and the Respondent must bring copies of the file and witness statements to the hearing for their own use. The Respondent must also bring two spare copies of the file and the witness statements for the tribunal to use.

Variation of dates

10. The parties may agree to vary a date in any order by up to [14] days without the Tribunal's permission, but not if this would affect the hearing date.

About these orders

11. These orders were made and explained to the parties at this preliminary hearing. They must be complied with even if this written record of the hearing arrives after the date given in an order for doing something.
12. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
13. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Writing to the Tribunal

14. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

Useful information

15. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
16. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
17. The Employment Tribunals Rules of Procedure are here:
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
18. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>

Employment Judge Omambala KC

Date 24 April 2023