



EMPLOYMENT TRIBUNALS

Claimant: Mr Martyn East

Respondents: Hopkinson Waste Management Limited

At a Remedy Hearing at the Employment Tribunal

Heard at: Nottingham

Heard on: 23 May 2023

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: Tom Fletcher, Derbyshire Law Centre

Respondent: Amy Hallam, Solicitor

JUDGMENT

The Employment Judge gave Judgment as follows:

1. The name of the Respondent is Hopkinson Waste Management Limited.
2. The Respondent's application to extend time to file the ET3 is granted.
3. The ET3 filed by the Respondent on the 25 April 2023 is accepted.
4. The default Judgment signed on 19 April 2023 and sent to the parties on 3 May 2023 is hereby revoked.

REASONS

Background

1. The Claimant presented his claims to the Tribunal on 13 January 2023. He had been employed by the Respondent as an HGV Driver from 1 June 2005 until 23 September 2022. He claimed:
 - Unfair dismissal.
 - Notice pay.
2. He said that he had been dismissed on 23 September 2022 when he received a letter which allegedly accepted his verbal resignation. He said that he had not resigned and he had also not been paid his notice pay.
3. His claim was accepted and served on the Respondent on 25 January 2023. In the letter to the parties, which also made Case Management Orders and listed the matter for hearing today, the Respondent was told that if they wished to defend the proceedings, they had to submit their response by 22 February 2023 and if not a Judgment maybe issued against them.
4. On 22 February 2023 Jules Gaylor, Managing Director of the Respondents wrote to the Tribunal to say:

“I would like to inform the Employment Tribunal that we have written to Mr East’s Legal Representative (Derbyshire Law Centre) and have agreed to their offer to use ACAS to attempt to settle this matter prior to the Employment Tribunal date.

Should we not be able to settle the matter, we would like to request an extension of the timescales laid out. Our defence is dependant on witness statements from several of our current and former employees, two of our customers and our previous owner and current Transport Manager, David Hopkinson. Our Legal Representatives are still in the process of gathering this evidence.

Could I also respectfully request that correspondence to ourselves be via email and post. We are still not receiving normal post sporadically following the recent industrial action.

Best regards”
5. On that day there was also an exchange between Mr Gaylor and Mr Fletcher concerning the possible settlement of the case.
6. The case was not resolved through ACAS.
7. On 8 March 2023 the Claimant sent a schedule of loss and sent a copy of the same to the Respondent.
8. On 21 March 2023 the Claimant then sent his documents to the Respondent in accordance with the Case Management Orders.

9. On 14 April 2023 the Claimant then sent his witness statement.
10. The Respondents did nothing and on 19 April 2023 my colleague Employment Judge Broughton issued a Judgment under Rule 21 of the Employment Tribunal Rules of Procedure 2013 (The Rules) because the Respondent had failed to file a response in time. This was sent to the parties on 3 May 2023.
11. In the meantime, on 25 April 2023, the Respondents sent in their response and said it was filed further to the email of 22 February 2023 which they described as a request for an extension of time for filing the response.
12. On 28 April 2023 Mr Fletcher on behalf of the Claimant responded to that application, saying that the email of 22 February did not amount to a request for an extension of time and pointed out the Respondent had done nothing including not complying with Case Management Orders. They objected to the Respondents ET3 being accepted.
13. On 11 May 2023 the Respondents made a further application. In so far as they needed to do so they said that they were applying for an extension of time to file the response and asked that the ET3 should be accepted and that the Default Judgment issued should be revoked.
14. They pointed out that the email of 22 February 2023 had been submitted in good faith at time when the Respondents were not legally represented. They had tried to resolve the case through ACAS but when the attempts at conciliation failed, they had failed to take further steps.
15. It was decided by my colleague Employment Judge Michael Butler that the application for extension of time would be dealt with at the commencement of the hearing today which had been listed as a Remedy Hearing following the Default Judgment.

The Hearing Today

16. I heard from both Miss Hallam and Mr Fletcher who reiterated their positions as per the correspondence I have outlined above.
17. I take into account that at the time of making their request on 22 February the Respondents were not legally represented and they clearly did not understand that they needed to apply for a specific extension of time to file their response and that their letter did not amount to that.
18. The Respondents say that as soon as they realised their mistake they acted promptly and made an application to extend time and file the ET3.

My Conclusions

19. I have considered all the circumstances of case as described above and having read the ET3 I am satisfied that the Respondents have an arguable case which needs to be determined on the evidence.

20. I accept Mr Fletcher's comments about failure to deal with Case Management Orders or indeed comply with the requirements but I am satisfied that it is in the interest of justice and in accordance with the overriding objective for the application to be granted.

21. I am therefore granting the application to extend time and accepting the ET3.

22. A consequence of that is that I must consider whether to revoke the Judgment issued in this case and I am satisfied that it is appropriate to revoke that Judgement.

Listing a Hearing

23. The case will now be heard by an Employment Judge sitting alone at the Tribunal Hearing Centre 50 Carrington Street, Nottingham on Wednesday 20 September 2023 and Thursday 21 September 2023 starting at 10.00am each day or as soon as possible thereafter as the Tribunal can hear it. 2 days have been allocated to hear the evidence and determine liability and remedy as appropriate.

CASE MANAGEMENT ORDERS Made pursuant to the Employment Tribunal Rules 2013

Documents

1. 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 with an index and page numbers and send a hard copy to the Claimant **by 6 June 2023**.
2. The file should contain:
 - 2.1. The claim and response form, any changes or additions to them in and any relevant Tribunal Orders in the front of the file.
 - 2.2. Other documents or parts of documents that are going to be used at the hearing in date order.
 - 2.3. The Claimant and the Respondent must both bring a copy of the file to the hearing for their own use.
 - 2.4. The Respondent must send an electronic version of the bundle to the Tribunal **by 4.00pm on 19 September 2023** and provide 2 more copies of the file for the hearing to use by 9.30am on the first morning of the hearing.

Witness Statements

3. The Claimant and the Respondent must prepare witness statement for use at the hearing. Everybody who is going to be a witness at the hearing including the Claimant needs a witness statement.
4. A witness statement should be typed if possible. They must have paragraph numbers and page numbers. They must set out events usually in the order they happen. They must also include any evidence about financial losses and any other remedy the Claimant is asking for. If a witness statement refers to a document in the file it should give the page number. At the hearing the Tribunal will read the witness statement. Witnesses may be asked questions about their statements by the other side and the Tribunal.
5. The Claimant and the Respondent must send each other copies of their witness statements **by 4 July 2023**.
6. The Claimant and the Respondent must both bring copies of all the witness statements to the hearing for their own use.
7. The Respondent must send to the Tribunal an electronic version of all the witness statements **by 4.00pm on 19 September 2023** and bring 2 copies of all the witness statements to the Tribunal for the Tribunal to use by 9.30am on first morning of the hearing.

Employment Judge Hutchinson

Date: 31 May 2023

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and respondent(s) in a case.