



# EMPLOYMENT TRIBUNALS

**Claimant:**

Miss E Bowman

-v-

**Respondent:**

Shenstone Country Club Ltd (Respondent 1)

Harpal Panesar (Respondent 2)

## RECORD OF A PRELIMINARY HEARING

**Heard at:** by video                      **On:** 13.09.2023

**Before:** Employment Judge Mensah

**Appearances**

For the claimant: Mr Bruce Henry (Counsel)  
For the respondent: Mrs Ambrat Kaur-Singh (Solicitor) for R 2, 3 and 4  
For the respondent: No appearance for the R1 [in liquidation].

## JUDGMENT

The Tribunal orders:

- (1) The second Respondent's application to extend time for filing of a response is granted. The Response filed on the 08.09.2023 is accepted.

## REASONS

- (2) The original claim form was served by letter dated 20.12.2022 on 509 Aldridge Road for R1 (hereinafter *Shenstone Country Club Ltd* and R2 (as above)). The deadline for a response was 17.01.2023. No response was filed. It was re-served on the 09.02.2023 at Flat 6 Abbey road because the legal officer had noted the address on Companies house had changed.

- (3) By email dated 08.09.2023 the second Respondent attached a late response, explaining that he had been ill after the last hearing on the 17.07.2023 for 4 weeks and then instructed sols to draft and file application and response. I wanted to understand more about why the response was not presented until the 08.09.2023, I can see the defence is the Claimant was in fact employed by the first Respondent. The first Respondent has been added and confirms they are the correct legal entity.
- (4) The first and second Respondent say they investigated the Claimant's allegations against a staff member of inappropriate behaviour of a sexual nature and could find no evidence of the same. They say the Claimant in fact terminated her employment because she was due to leave to start a university course and she was not laid off as alleged. The Claimant alleges she was subject to sexual harassment and then victimised by the 2<sup>nd</sup> and the 4<sup>th</sup> respondent is vicariously liable for this. The Claimant denied having resigned and says she was laid off.
- (5) It was agreed with the parties the guidance dealing with an extension is found in *Kwik Save Stores Ltd v Swain* [1997] ICR 49 (see *Moroak (t/a Blake Envelopes) v Cromie* [2005] IRLR 535, [2005] ICR 1226, EAT, at [30], per *Burton J*). These principles require that,
- (i) all relevant documents and other factual material must be put before the tribunal to explain both the non-compliance and the basis on which it is sought to defend the case on its merits, and the employment judge in exercising his discretion must take account of all relevant factors, including,
  - (ii) the explanation or lack of explanation for the delay and
  - (iii) the merits of the defence, and
  - (iv) must reach a conclusion which is objectively justified on the grounds of reason and justice, taking into account the possible prejudice to each party.
  - (v) The investigation does not, however, require an explanation from the respondent as to why he did not present his response at an earlier stage in the 28-day period (*Moroak*, at [30]) although in practice such an explanation may form part of the application as to why an extension ought to be granted.
- (6) The second Respondent has not put before me any documentary evidence to show the post was diverted to Torquay and it is not consistent with the address for the individual he named, albeit there is another individual with a Torquay address, but he appears to have also left the business in September 2022. There is no documentary evidence before me regarding the second Respondent being ill for a period of 4 weeks such that he was not able to respond to the claims or that he was out of the country for 4 weeks and again unable to respond to the claims. I note I made it clear to second Respondent in the Case Management hearing on the 17.07.2023 that he is out of time and if he wished to defend the claims

he would have to make an application. This is spelt out in clear terms in the order.

- (7) In terms of explanation for the period the second respondent has not filed a statement but has, through his lawyers stated he did not receive any notification of the claims until April 2023 because the post was diverted to Torquay from August 2023 for 6 months given, he had resigned from the business and Mr Carl Meah had taken over. He says Mr Meah was in Torquay. Thereafter he relies upon what he told me in the CMH that he received a questionnaire and returned it. This is not on the Tribunal file. Finally, he says he was ill for 4 weeks and out of the country for 4 weeks after the hearing on the 17.07.2023.
- (8) I find the explanation given vague and unsubstantiated by any documentary evidence. It does not adequately explain the reasons for non-compliance from 17 January 2023 through to the 8 September 2023.
- (9) Turning to the merit of the defence. I note today the first Respondent accepts the actions alleged to have been taken by second Respondent were on behalf of First Respondent and no defence under section 109(4) is pursued. This means it is accepted the second Respondent was acting in accordance with his role within the business and not outside his remit. The response from the First Respondent is not late as they were only brought into the proceedings in July 2023 following the last hearing. The Claimant had not identified the first Respondent in the original claim.
- (10) The current response filed suggest there is a dispute on the facts as to what happened. The Respondents says the second Respondent took all reasonable steps to investigate the allegations but could find evidence of the same. They deny any breach of the ACAS code and they allege the Claimant resigned from the business because she was going to university and denied reducing her hours. No documentary evidence has been filed on behalf of the second Respondent but again I balance the delay with the fact the first Respondent was brought into this claim late and the solicitors were only instructed on the 08.09.2023. Mrs Kaur-Singh clearly had limited instructions at the hearing.
- (11) Mr Bruce rightly took me to some WhatsApp exchanges filed on behalf of the Claimant, which on their face support her claim to have had her hours reduced and been dismissed by the second Respondent. I say on their face because I don't have a direct response to this evidence. The evidence so far does not paint the second Respondent in a positive light but I take into account the claim against the first Respondent is outstanding, there is a factual dispute between the parties (this includes the allegations of victimisation against both). It would clearly cause significant prejudice to first Respondent if the second is not granted an extension. It would prejudice the Claimant but only to the extent her claim is not being determined today against, as there will still need to be a hearing for the claim against the first Respondent.

- (12) Exercising my discretion and balancing the evidence before me I grant the extension. Had it not been for the position of the first Respondent today agreeing they are the employer and wholly responsible for the second Respondent's actions and so the actions being intrinsically linked to his role, and the first Respondent being brought into these proceedings late and therefore having insufficient time to prepared fully for the case, I would have not granted the extension. However, weighing up all the evidence including the position of the respective parties and the prejudice I grant the extension.

*Employment Judge Mensah*

13.09.2023

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