



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000523/2023

10

Held on 1 December 2023 in Chambers

Employment Judge I McFatridge

15

Wendy White

**Claimant
Written representations**

20

Bosch Rexroth Ltd

**Respondent
Written representations**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25

The judgment of the Tribunal is that the respondent's application to extend time for submitting the ET3 dated 29 November 2023 is granted and the secretary is directed to accept the ET3 presented by the respondent on 29 November 2023.

REASONS

30

1. In this case the claimant lodged a claim with the Tribunal in which she made claims of unfair dismissal and sex discrimination. The notice of claim was forwarded to the respondent on 19 October 2023 and indicated that the ET3 required to be lodged by 16 November 2023. No ET3 was lodged by that date. On 8 November 2023 the respondent emailed the

35

Tribunal stating that they were not the claimant's employers and stating that her employers were in fact Andron Facilities Management. The

E.T. Z4 (WR)

Tribunal responded on 15 November 2023 advising that as Bosch Rexroth Ltd were currently named as respondent they were required to submit a response.

2. The respondent wrote to the Tribunal again on 15 November confirming that they were not the claimant's employer. In the meantime the claimant forwarded her Agenda to the respondent for the preliminary hearing on 19 November 2023. On 19 November the claimant also wrote to the Tribunal confirming that she had worked for Andron as a sub-contracted cleaning company however it was an employee of the respondent who she alleged was harassing her. An Employment Judge wrote to the claimant on 22 November 2023 confirming that albeit no ET3 response had been received the case would proceed to the telephone case management preliminary hearing which had previously been fixed for 14 December 2023. On 29 November the respondent's new representative wrote to the Tribunal enclosing an ET3 response and also an application for extension of time so as to allow the ET3 response to be received late. In support of their application they referred to the case of *Kwik Save Stores Ltd v Swain and others* [1997] ICR 49. They indicated that the reason for late submission was an oversight. The case papers were received by the respondent's health and safety manager during a period when there were no members of the HR team available. He had contacted Andron and agreed that Andron would deal with the response. He understood that the respondent did not require to do anything further as they were not the claimant's employer. The claimant's representative also made reference to the balance of prejudice and noted that if the respondent were not entitled to play any part in the proceedings there was a possibility that they would be found liable to pay compensation in a situation where they were not liable particularly as it was their position that they were not the claimant's employer. They referred to the grounds of defence set out in the ET3.
3. The Tribunal wrote to the claimant asking if she had objections to the application and if so whether she was happy for the matter to be dealt with on the basis of written representations. She wrote to the Tribunal on 30 November 2023 confirming that she did object but was content for the

matter to be dealt with by written representations. She then went on to state that she wished to make it clear that she was not looking for any kind of payout but it was her position that the respondent did not deal with harassment complaints properly and she wanted this documented.

5 4. Although the respondent in their application had requested a hearing I consider that given the circumstances it is appropriate to deal with this matter by way of written representations. I observe that I am entitled to do so in terms of Rule 20(3).

10 5. I consider that the respondent has correctly referred me to the case of Kwik Save Stores Ltd v Swain as setting out the approach which I am required to take in this case. With regard to the balance of prejudice I entirely agree with them that in the interests of justice for the claim not to proceed as undefended given that the respondent has set out a relevant defence in their ET3 response. If they were not permitted to put forward
15 their defence then there would be a chance of them being liable to pay significant compensation in a situation where they would not be legally liable. On the other hand the prejudice to the claimant is relatively slight. If her claim is well founded all she loses is the windfall benefit of receiving compensation without having to prove her claim at a hearing. I note in
20 particular the claimant is saying that her main purpose in raising the proceedings was to draw attention to the respondent's failings rather than the obtaining of compensation and note that if this is indeed the case then it is in the claimant's interests as well as those of the respondent for matters to proceed to a defended hearing. I do observe that there was no
25 external reason for the confusion which the respondent says led to the late submission of the ET3. On the other hand I accept that such confusion may arise particularly in a situation where the respondent's position is that the claimant was not actually their employee. I also note that the delay here was only a matter of a few weeks. In all the circumstances I consider
30 it is appropriate to exercise my discretion in favour of granting the extension of time and allowing the ET3 to be lodged late.

Employment Judge : Ian McFatridge
Date of Judgment : 5 December 2023
Date sent to parties : 5 December 2023