

2. The Notice of Claim was served on the respondent on 18 April 2023 and the Response was due to be filed on 16 May 2023.
3. No Response was received and on 18 April 2023 a Legal Officer directed that the Claim Form be reserved on the respondent at its registered office. On the same date a Judgment was served on the parties striking out the claimant's claim for unfair dismissal on the basis that the claimant had less than two years' services and section 108 of the Employment Rights Act 1996 required a claim to have not less than two years' service to make a claim for unfair dismissal.
4. A Response was subsequently filed by respondent and rejected by the Tribunal on 23 June 2023 on the basis that it was filed out of time and was not accompanied by an application to extend time as required under Rule 20 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules").
5. A telephone preliminary hearing (case management) took place on 4 July 2023. At the hearing Mr Singh, for the respondent, indicated that he had not received notification of the rejection dated 23 June 2023. As such, Employment Judge Manley informed Mr Singh that he had 14 days to an application for reconsideration and that if such an application was made it could be considered at the start of the hearing before me today.

Reconsideration application

6. Mrs Ralph advised me today that Mr Singh had duly made a reconsideration application on 5 July 2023 together with an application for an extension of time to file an amended Response on the basis that the delay in filing the Response was a consequence of internal administrative issues. A copy of this email and others that Mr Singh had sent to the Tribunal in relation to the extension of time was not in the bundle. As such, I adjourned the hearing to enable Mrs Ralph to forward these emails to the claimant and to the Tribunal. Following the adjournment Mrs Marshall confirmed that she had the emails but required time to read them. As such, we took a further short adjournment to enable Mrs Marshall to read the emails.
7. In his application Mr Singh indicated that initially the Claim Form was delivered to the respondent's Kidderminster facility at a time when it was undergoing a transition in management. This disrupted the flow of communication and prevented the claim form from being relayed to Head Office in a prompt manner. Subsequently, there was a delay in post being forwarded from the registered office which is c/o Kreston Reeves.
8. Mr Singh did not receive a response from the Tribunal to his application and followed this up with the Tribunal on 12 July 2023 and then again on 12 September 2023. He received no response.

9. On 2 November 2023 the respondent instructed Croner to act on its behalf who made an application to submit a revised Response on the basis that when the respondent filed its original Response it was not legally represented and for the reasons set out above. The respondent apologised for the delay but submitted that it would be in the interests of justice to grant the extension of time and amendment to ensure that the parties would be of equal footing.
10. Mrs Marshall, on behalf of the claimant, objected on the basis of the time taken to make the application to amend. However, it was accepted that an earlier application had been made on 5 July 2023 which the respondent had followed up but received no response from the Tribunal.

Applicable Law

11. Rule 20 (1) of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 provides:

“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”.

12. In making my decision I considered the Presidential Guidance on Rule 21 Judgments issued on 4 December 2013 and the principles set out in **Kwik Save Stores Limited -v- Swain and others [1997]ICR 49**. The EAT held that:

“the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice”.

Conclusions

13. I have, carefully considered the explanation supporting the application to amend. I can see that following the case management hearing on 4 July 2023 a timely application for an extension of time was made by the respondent without the benefit of legal advice. This was followed up on two occasions but no response was received from the Tribunal. I am satisfied that the delay on the part of the respondent was caused by an administrative oversight. I am also satisfied that the explanation provided by the respondent is an honest and satisfactory one and that the respondent's grounds of resistance has merit. Finally, I am satisfied that the respondent would suffer more prejudice than the claimant if the application was refused. As such, I decided that it would be in the interests of justice for the claimant's application of 2 November 2023 for an extension of time to file a Response to be granted.

Useful information

14. 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.
15. 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/>
16. The Employment Tribunals Rules of Procedure are here:
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
17. 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 **Choudry**
6 November 2023

Public access to employment tribunal decisions

All judgments (apart from those under rule 52) and any written reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.