



# EMPLOYMENT TRIBUNALS

**Claimants:** Miss A Knight  
Miss L Knight

**Respondent:** J & S Metals

**HELD by** CVP at Leeds **ON:** 7 June 2024

**BEFORE:** Employment Judge Miller

## REPRESENTATION:

**Claimants:** In person  
**Respondent:** Mr C Price, Counsel

# REASONS

1. These are the reasons for my decision to extend time for the respondent to present their responses to these claims. That decision was given orally at the case management hearing on 7 June 2024 and these reasons are produced following the application for reasons made orally at the hearing.
2. The claimants commenced early conciliation against the respondent from 4 August 2023 in respect of Aimee Knight and 24 August 2023 and in respect of Lorraine Knight. Early conciliation finished on 15 September and 27 September 2023 respectively and the claimants then made claims for unfair dismissal and non-payment of certain sums. The claims were presented on 25 September in respect of Aimee Knight and 14 October in respect of Lorraine Knight. These were sent to the respondent at their offices, which are on an industrial estate, by the Tribunal on 19 October in respect of Aimee Knight and 22 November in respect of Lorraine Knight.
3. Further case management documents were sent to the parties over the next few months although the documents that were sent to the claimants were sent by email.
4. Miss Riley, a Director for the respondent, who gave evidence for the respondent said that the respondent did not receive any of those documents and that they did not find out about the claims until 31 May 2024.

5. I note that both parties refer to conciliation with ACAS in relation to their contact with each other potentially about the claims, but this pre-dated the claims as a separate process and has no bearing on the respondent's knowledge of the claims.
6. When the respondent found out about the claims they took quick steps to instruct lawyers and made an application for an extension of time. That application came in yesterday 5 June 2024. There had at this point been no judgment under rule 21 in favour of either claimant although Lorraine Knight had been informed that a judgment might be made. Aimee Knight had not been so informed.
7. It is hard to believe that all of the correspondence from the Employment Tribunal went missing but Miss Riley did give evidence that other correspondence that had been sent to the respondent at their offices had also gone missing previously. She gave an specific example of cheque books and correspondence from the bank. I also note that the respondent did act promptly and incurred costs when the proceedings undoubtedly did come to their attention.
8. On balance, despite some hesitation, I prefer Miss Riley's evidence and find that the respondent was not as a matter of fact aware of the Employment Tribunal proceedings until 31 May 2024.
9. When considering whether to extend time the leading case that I was referred to by Mr Price is *Kwik Save Stores Limited v Swain and Others* [1997] I.C.R. 49 in the Employment Appeal Tribunal. In that case the Tribunal said the following matters are relevant when deciding whether or not to extend time for a respondent to present a response.
  - 9.1. The employer's explanation as to why an extension of time is required. The more serious the delay the more important it is that the employer provide a satisfactory and honest explanation.
  - 9.2. The balance of prejudice. Would the employer if its request for an extension of time were to be refused suffer greater prejudice than the complainant would suffer if the extension of time was to be granted.
  - 9.3. The merits of the defence. If the employer's defence is shown to have some merit in it justice will often favour the granting of extension of time. Otherwise the employer might be held liable for a wrong which it had not committed.
10. Dealing with those three headings briefly, the explanation for the delay is satisfactory and in my view honest.
11. Turning to the next heading, there would be significant prejudice to the respondents not being able to defend the claims which are worth many thousands of pounds. Although the claimants would be prejudiced in having to present their claims and evidence to support them if I granted the extension, it is not just, or not sufficiently just, for them to just benefit from a windfall because of problems with the post.
12. In respect of the merits of the defence, the respondent's explanation although they have not presented a full response yet, was not particularly compelling, even on the basis of the description of the working arrangements as described by Miss Riley. In summary, the respondent says the claimants were not employees but independent contractors. It is far from obvious that that is likely to amount to a non-employment relationship. However, questions of employment status are fact

specific and turn on the detail. The defence is certainly arguable and there is more than little reasonable prospects of success as it is set out in the application and Miss Riley's witness statement.

13. It is also relevant to say that the claimant's claims need clarifying and need to get a bit more detail about what the claimants say happened. Further, no evidence has been presented to the Tribunal for what was to be the final hearing today, so it is likely there would have been a delay to allow the claimants to provide evidence in any event.
14. Overall therefore, it is in the interests of justice to extend time for the respondent to present the response. However, they have already taken the initial steps to do so instructing lawyers within the last week to prepare their response, so I extend time as I have said by three weeks to 28 June 2024.
15. This was subsequently varied on application of the respondent and with the agreement of the claimants to 5 July 2024 to allow time for the production of the case management orders with a list of issues.
16. I confirm, by way of addendum to my oral decision, that I considered the provisions of rule 20. The respondent put their application in writing. It was not accompanied by a draft response but they did explain why not – namely that direct access counsel had only been instructed the day before the hearing. This was a reasonable reason in my judgment.
17. The claimants were given notice of the application, although they did not have 7 days to respond, they did produce a detailed response before the hearing. I therefore decided that it was in the interests of justice to consider the application today, rather than cause additional delay by postponing the hearing and rearranging it for a later date.

Employment Judge Miller

Date: 21 June 2024