EMPLOYMENT TRIBUNALS

Claimant: Mr J Galvin-Jones

Respondent: Rupee Solutions UK Ltd

Heard at: Manchester (via CVP) **On:** 23 May 2024

Before: Employment Judge Eeley
(sitting alone)

REPRESENTATION:

Claimant: Did not attend and was not represented
Respondent: Ms A Bibi, consultant.

JUDGMENT having been sent to the parties on 10 June 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This is the decision and reasons in relation to the extension of time application made by the respondent pursuant to rule 20. The respondent has made an application to extend the time limit for presentation of the response to the claimant's claim. In deciding the application I had regard to the contents of the preliminary hearing bundle, the written witness statement of Mr Baumworcel, and the representations made on behalf of the respondent during the hearing. Mr Baumworcel did not attend the hearing and did not give oral evidence.

Relevant Chronology

2. The relevant chronology in relation to the application before me is that the claimant's employment with the respondent concluded with an effective date of termination on 20 March 2023. We can see from the paperwork that there was a grievance regarding pay which was under consideration during June and July

2023. The claimant obtained an ACAS Early Conciliation certificate on 2 June 2023 and presented his claim form to the Tribunal also on 2 June 2023. It appears that the ET1 was posted by mail to the respondent at the address given on the ET1. It was posted on 16 June 2023. It was not emailed.

3. On 28 June 2023 we can see that there was some correspondence between the claimant and the respondent's Chief Executive, Mr Baumworcel, who is based in Brazil. Apparently, the claimant was the only employee of the company in the UK during the relevant period. In any event, there was some text or WhatsApp communication which I can see in my bundle of documents at page 68, and that is discussing the availability of the parties for a grievance meeting. I can see that the claimant indicates, "*I believe you should have now received a letter from the Tribunal case I raised at the start of June. It would have been posted to the registered business address. Thanks."* I do not have details of Mr Baumworcel's response to that in the papers before me. There is nothing to indicate that he went back to the claimant or responded by saying something to the effect of, *"What document? Can you email it to me? What Tribunal case?"* Nothing seems to have been done by the respondent's Chief Executive at that point in time.

4. In any event, it appears that the claim form was not picked up from/delivered to/received at the respondent's registered address. This address was being administered for the respondent by Bruntwood. From Mr Baumworcel's witness statement to the Tribunal it appears that this may well be part of a wider issue as there may be concerns around whether the respondent has received any post at its registered address or had any post forwarded to it by Bruntwood. It is not clear from the examination carried out by the Chief Executive, whether documents have not been received in the post by Bruntwood or whether they have just failed to forward them on to the respondent.

5. Going back to the chronology, the deadline for the presentation of the ET3 response was 14 July 2023. On 24 August 2023 the Tribunal sent a letter to the claimant asking for rule 21 information to facilitate a potential judgment. Indeed, that judgment was issued on 2 October 2023, the judgment sum being £1,750 for unauthorised deductions from wages plus expenses of £161.75.

6. Then there was a period of time when nothing happened.

7. The respondent's Chief Executive says that he first became aware of the judgment and the Tribunal proceedings on 6 December 2023 when he was told of the online judgment by a friend who had seen it online and was given the link to the judgment. The respondent promptly contacted legal representatives (Peninsula) on 8 December 2023. In the meantime, he received an email from the Tribunal penalties department on 14 December 2023. The respondent's Chief Executive says that he carried out checks of all the company's UK addresses to see if correspondence was received from the Tribunal or the claimant. Bruntwood denied receiving it at the Deansgate address and hence it had not been forwarded. I can see that there are emails within the bundle where the respondent seeks to clarify with a number of office providers whether

they have received anything relating to the Tribunal case. For example, we have an email at page 59 dated 8 December 2023 from someone at Beever & Struthers saying that they have not received anything. We also have an email of similar date from Mr Baumworcel to Bruntwood (page 61) asking what has happened. I do not see the response to that from Bruntwood within the bundle.

8. On 18 December 2023 the respondent was allocated a representative within Peninsula. The representative acted quickly on 22 December to make the initial application to set aside the rule 21 Judgment and for an extension of time to present a response. At this stage they did not have access to the ET1 and claim form and therefore struggled to put in a substantive response to the claim.

9. On 10 January 2024 the respondent received a copy of the Tribunal documents, including the claim form. Within a short period, by 15 January 2024, the respondent's application was renewed, accompanied by a draft ET3 defence to the claim.

10. That is the material chronology.

Conclusions

11. In determining the application I have a broad discretion. The conclusion needs to be objectively justified on the grounds of reason and justice. I should take into account all material factors following guidance in cases such as **Kwik Save v Swain 1997 ICR 49** and **Thornton v Jones UKEAT/0068/11/SM**. I have to look at all the relevant factors, particularly the explanation provided by the respondent for the delay, the merits of the defence and the balance of prejudice between the parties. I also take into account, of course, the factors set out in rule 2 as part of the overriding objective in Tribunal proceedings.

12. I take on board the fact that the respondent acted quickly in December 2023 once it was alerted to the existence of the judgment, and they acted reasonably quickly to obtain legal advice, get a copy of the documents and put in the application and the defence. That is to the respondent's credit.

13. On the other hand, I am still puzzled as to why the respondent did not chase this up in June 2023 (within the relevant time limit) when Mr Baumworcel was directly alerted by the claimant to the existence of a Tribunal case and relevant paperwork related to the case. The respondent says to me today, effectively: *"I wasn't told that it was a claim form, I didn't realise what kind of letter it was."* That may well be true, but the reference to Tribunal proceedings and the fact that he was told that a letter had been sent to his registered address should have put him on notice to do something about it and at least make relevant enquiries. At the very least he could have made enquiries with the claimant to ask about the case and ask where the paper work had gone. He could have asked, *"can you send me a copy of the claim by email so that I can respond to it?"* The respondent apparently did not do that. Mr Baumworcel left it in abeyance. I consider that he had enough information by June 2023 to alert him to the Tribunal proceedings and that, at the very least, he should have

contacted Bruntwood at that stage. The evidence that I have before me suggests that he did not do that until December 2023. I have to query why he did not act sooner.

14. The claimant has had a judgment in place since October 2023. Whilst the respondent understandably says that allowing that judgment to stand would be to give the claimant an unjust windfall, there would also be prejudice to him in setting the judgment aside in terms of the delay in the case. The claimant did what was required of him and he took steps back in June 2023 to alert his former employer to the existence of the claim. The question which now arises is why the claimant should now have to go through a process which unravels a judgment that he has had since October 2023, with the inevitable further delay involved in processing the claim, accepting the defence, giving directions and having a final hearing. As of today's date, we are six months on (or more) from the initial judgment. We would be likely to need at least a further six months to get the case to a final hearing. In those circumstances the claimant is likely to have to wait 12 months (from the original judgment date) before he finds out whether his claim is going to succeed or fail. This has to be examined alongside the principle of proportionality. The size of the claim is relatively small in comparison to many Tribunal claims. It is a small value claim and the time, expense and Tribunal resources which will be involved in unravelling matters and relisting it for a final hearing is disproportionate to the value of the claim.

15. The respondent says that it has a defence to the claim and that it will send a witness of some description (I was not told who) to explain that effectively the claimant was overpaid in respect of leave. Essentially, the defence seems to be that the claimant logged the days that he took as annual leave on the HR system. He was paid for this leave. At some point during the chronology the respondent has looked at the system in some way (no details are given) and interrogated it to find when the claimant did or did not have work-related meetings. From this information, the respondent has deduced that the claimant was not at work or working for the respondent on some of the days which he claimed were working days and for which he was previously paid. Effectively the respondent is saying that the claimant was not at work when he should have been and therefore was not entitled to pay for those days. The respondent therefore deducted these alleged overpayments from the claimant's final payslip.

16. If this defence were to go to a final hearing quite a lot of evidence would be required to establish the defence. A Tribunal may find it quite a leap from noting that the claimant had not logged on for meetings to concluding that this proves that he was not engaged in some form of work for the respondent on the relevant dates. The latter conclusion does not automatically follow from the former proposition. No doubt the claimant will have to interrogate what records he still has access to in order to present his claim at a hearing. I query how many records he will still have access to now that he has left the company. Will he have a fair opportunity to demonstrate that he was in fact at work on the

relevant dates? Has his ability to prove his case been undermined by the passage of time?

17. The respondent says that it has not clawed back all the monies to which it was entitled. The respondent has not given me a breakdown of the £1,750 which it has deducted from the claimant's salary (which it appears is precisely the salary sum that was owed to the claimant in his final payslip.)

18. I query how likely it is that the respondent is going to be able to prove its case on the facts. I am told that a witness will attend the hearing. If it is Mr Baumworcel he will have to travel to the UK from Brazil because his evidence cannot be heard via CVP from Brazil according to the current Foreign and Commonwealth Office list. Is he realistically likely to fly to the UK given the cost of doing so as compared to the value of the claim? I doubt that. Ms Bibi, on the respondent's behalf, suggests that somebody already in the UK (another employee) will be in attendance to give the relevant evidence at the final hearing. Assuming that happens, I query the quality of that likely witness evidence and whether such a witness will be able to address the salient points in the case, given that I am told there were no other employees in the company in the UK during the relevant period of time. It is not apparent that any substitute witness will be able to give any direct evidence as to what actually happened in this case (rather than just confirming what he or she has been told by someone else.) However, I leave that as a neutral factor given the wider circumstances of the case.

19. The bottom line is that the respondent has an obligation to set up a proper mail forwarding system for the business. It apparently did not do so. This could have been rectified if the respondent had acted earlier in response to the information that the claimant did provide. It could have put itself on an equal footing with the claimant if appropriate and timely enquiries had been made. If it is the case that the respondent had not had any documents at all forwarded to it by Bruntwood, that must have been apparent to the respondent much earlier than December 2023. Why did the respondent not check this in June 2023? Why did the respondent not make enquiries or ask the claimant for a copy of it?

20. Taking a step back and looking at the relevant factors, the balance of prejudice, what the respective parties could (and should) have done, and taking due account of proportionality, I am afraid my decision is that the extension of time should be refused and that the rule 21 Judgment issued in October 2023 will remain in place and will remain enforceable.

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Employment Judge Eeley

Date: 18 June 2024

REASONS SENT TO THE PARTIES ON
Date: 1 July 2024

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