



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Ms R Namri
Respondent: Birkin Group Limited
Heard by: CVP
On: 23 August 2024
Before: Employment Judge Adkin

Appearances

For the Claimant: Mr Matthew Harriet
For the Respondent: Mrs Jo Moles

REASONS

1. In today's hearing I am dealing with the reconsideration of a judgment entered on 9 May 2024 and also the Respondents application for submission of an ET3 out of time for an extension of time under Rule 20 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules").

Background

History leading to the claim

2. The Claimant commenced working at Lady Margaret School, London SW6 on 1 March 2022.
3. She says that from April 2023 onward there were repeated incidences of bullying and harassment by a colleague Sahra and a manager Deysee.
4. She submitted an ACAS form to commence the ACAS conciliation period on 8 November 2023 and the ACAS conciliation period expired on 20 December

2023. The Respondent says that they were not aware of that ACAS form or that ACAS period being live.

5. There was a claim submitted by the Claimant on 19 January 2024.
6. The Claimant has the benefit of Trade Union representation. The claim contains complaints of holiday pay, arrears of pay and also harassment on the basis of race, (she is Moroccan) and/or religion beliefs (she is Muslim) and/or sex discrimination and victimisation and Trade Union detriment.
7. That claim was acknowledged by the Tribunal on 20 February 2024 and a Notice of Claim was sent to the Respondent by post at Birkin Group Limited, 11 Magnet Point Estate, Magnet Road, Grays Essex RM24 DR that is the Respondent's registered address and I have confirmed with the Respondent at today's hearing that that is the correct address.

Lack of response

8. An employee of the Respondent Laura Phillips gave an explanation not formally under oath but I accepted that she was attempting to assist the Tribunal truthfully. She explained that the Respondent shares its offices with various other businesses or at least it is in a shared business centre. She says sometimes post does go awry within the offices. When that happens, usually but not always, businesses identify and pass on to the correct recipient where they have been opened by or received by the wrong recipient.
9. The position of the Respondent is both the ACAS documentation and the ET1 were not received by them in their offices.
10. A Notice of Hearing was sent on 21 February 2024 to the Respondent for the CVP hearing due to take place on 1 May.
11. On 25 March 2024 a letter was sent on behalf of Regional Employment Judge Freer to the Respondent chasing given no response had been received to the claim. The Respondent's case is that is the first item of correspondence that they received to become aware of the claim. Also on that date Regional Employment Judge Freer or a letter sent on his behalf was sent to the Claimant requesting email contact details to contact the Respondent.
12. An email was sent by a representative of the Claimant Vatra Popaj of CAIWU who wrote in an email at 9:00 exactly copying Mrs Jo Moles who appears today to represent the Respondent and the Tribunal highlighting that no response had been received. Mrs Moles sent an email fifty minutes later at 9:50 saying we have not received any communication or paperwork relating to this case requesting paperwork.
13. She sent a further email the following day on 26 March to similar effect.

Judgment

14. There was a judgment entered by the Tribunal (by myself) on 9 May 2024 for the sum of £390.30 relating to the holiday pay arrears pay and I am told that

the parties are agreed that in fact that judgment has subsequently been paid in full by the Respondent.

15. The Respondents received the ET1 claim form for the first time seven days later on 16 May 2024 an email was sent from the Claimants representative on 3 June chasing the claims that had not been dealt with i.e. that is harassment, victimisation and Trade Union detriment and it is right to say that they are not dealt with in the judgment.
16. On 10 June there was a Notice of Hearing for a case management hearing to deal with those remaining claims to take place on 22 July 2024.
17. On 5 July 2024 the Respondent sent an email querying whether the judgment that had been entered was interim given that there was a case management hearing on 22 July 2024, unfortunately that email was not responded to by the Tribunal.
18. On 12 July 2024 an ET3 response was submitted to the Tribunal and copied to the Claimant's trade union. Although it was sent to the Union it did not reach Mr Harriett until this morning when I requested that that be sent to his personal email address so that he had the opportunity to see it after a short adjournment and respond to it at today's hearing.

Reconsideration

19. On 18 July 2024 a letter was sent out at my instruction of my own initiative I had decided to reconsider the judgment, this is because correspondence had by then been drawn to my attention suggesting that the Respondent was attempting to participate at the time I entered judgment, which I had not been aware of at the time that the judgment for the sums above had been entered. I gave the parties the opportunity to make observations. I have heard submissions from both sides at the hearing today.

Law

20. The overriding objective is for Tribunals to deal with cases "fairly and justly" (rule 2 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules")).
21. Guidance on applications for extension of time for responses is contained within the case **Kwik Save Store v Swain** 1987 ICR 49. Although that related to an earlier version of the Rules, this is still good law. The relevant considerations are (1) explanation for the delay, (2) merits for the defence and (3) possible prejudice to each party.

Tribunal conclusions

Reconsideration

22. First I shall consider reconsideration of the judgment on 9 May 2024.
23. Given that the Respondent has actually satisfied that judgment by making payment and does not seek to reopen that part of the judgment it seems to me that there is no need to reconsider it.
24. I accept it may be open to interpretation as to whether we need to reconsider the content of the judgment that suggests that determination of the claim can be made without a hearing. It seems however that this relates to the complaint for holiday pay arrears. Given that the judgment does not deal with the outstanding complaints by which I mean the harassment, victimisation and Trade Union detriment it seems to me that I do not need to reconsider it. In other words that judgement still stands, and has been satisfied by pain.
25. In the alternative, if I were wrong about that then it seems to me that it would be in the interest of justice to reconsider it such as to deal with the outstanding complaints. In any event it seems to me that I need to be looking effectively afresh at the question of the complaints where there has yet been no decision.

Extension of time for response (rule 20)

26. I am looking at this now under the jurisprudence on Rule 20 of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") for an extension. I have considered the case of Kwik-Save Store v Swain 198 although that did relate to an earlier version of the Tribunal Rules it is still good guidance.
27. (1) delay - the explanation for delay is that the Respondent is in offices with some other businesses, the post does sometimes go awry and the first correspondence they saw was the chaser correspondence sent on behalf of Regional Employment Judge Freer.
28. In just evaluating that it seems to me that one item of post going awry might be unlucky, two items going awry suggests carelessness. It is difficult for me to say that that is the Respondent's fault, it could be another business within those shared offices.
29. There is thereafter some delay explained it seems to me by the Respondent trying to understand or get details of the claim and also trying to understand the status of the judgment made on 9 May. I acknowledge the point made by Mr Harriett an application under Rule 20 might have been earlier but there was a practical problem that until May 2024 the Respondent did not know the claim that they were responding to. It was clear to the Tribunal at least that the Respondent was attempting to understand the claim to in order to respond and

participate. It seems unfortunate not all of that has got through to the Claimant's representatives. There are explanations for the delay.

- 30. (2) merits for the defence - I consider that the defence to the outstanding claims has potential merit. I note the Respondent is not trying to reopen the wage part of the judgment, the basis of the Claimants claim in part is that some asking if she came from Morocco and spoke Arabic was evidence of intrusive questioning and set the stage for later harassment. It seems to me that that may or may not be accepted by a Tribunal. In other words there is some prospect that the Tribunal will not accept that.
- 31. There are possible explanations including possible miscommunication for things that the Claimant has reported that she has understood as being said to her other than discrimination or detriment, so there are some merits in the defence.
- 32. (3) Prejudice - considering the possible prejudice to each party that has certainly been emphasised by Mr Harriett that there has been delay and I accept that there has been delay. Had there not been a failure to respond to the claim this case would probably have been case managed in May. As it is if I allow the application to extend time it will be dealt with in August, so there has been something in the region of a three month delay. I do accept that there is some prejudice to the Claimant in that but I do also note she has received payment of the sums outstanding in the holiday pay claim.
- 33. The prejudice to the Respondent is that if I do not allow the application they will be found by default to have harassed the Claimant relating to race, religion, sex and victimised her and subjected to Trade Union detriment, it seems to me that those are very serious matters, there is a real prejudice to the Respondent in not being able substantively defend those claims.

Conclusion on Respondent's application for an extension

- 34. So given all of those factors on balance I find it is in the interest in justice that the Respondent be able to defend the claim and so I am going to extend time.

Employment Judge Adkin

Date 9 September 2024

JUDGMENT SENT TO THE PARTIES ON

.....16 September 2024.....

FOR THE TRIBUNAL OFFICE