EMPLOYMENT TRIBUNALS

Claimant: Andrew Hindley

Respondent: TradeSun Limited

Heard at: Bristol (in private by Cloud Video Platform)

On: 11 July 2025

Before: Employment Judge David C. Gardner

Appearances

For the Claimants: Mr Andrew Hindley (in person)

For the Respondent: Mr Andrew Hook (former Managing Director for the Respondent, attended with the permission of the Respondent but without instructions to make representations)

JUDGMENT

The judgment of the Tribunal is:

(1) That the Respondent's application to postpone the present hearing is refused; and

(2) That the Respondent's application to extend time to present its response to the claim is allowed.

REASONS

Background

1. The Claimant presented his claim on 2 September 2024 in respect of a complaint of unfair dismissal. The claim form was served at the address for PFK Francis Clarke, the Respondent's accountant by the Tribunal on 11 November 2024. The Respondent was required to file a response by 10 December 2024.

2. The Respondent did not enter a response with the claims within 28 days of the Notice of Claim being sent to it. Consequently, on 28 February 2025, the parties were written to by the Tribunal. The Respondent was informed that it had not entered a response and a Judgment could be entered. The Claimant was asked to send further details of his claim in including a schedule of loss. A remedy hearing was listed for 11 July 2025 (the present hearing).

3. On 7 March 2025, the Claimant sent the further information requested.

4. On 10 March 2025, the Respondent received the Claimant's documentation of 7 March 2025, which it confirmed to the Tribunal in a letter dated 6 April 2025. In that letter it informed it had only just received the documentation from PFK Francis Clarke and informed it wished to defend the claim.

5. On 4 June 2025, the Tribunal wrote to the Respondent informing that if it wished to defend the claim it must send a request to extend time to file its response to the claim as well as sending an ET3 response form. The Respondent sent both of those documents on 24 June 2025.

6. On 10 July 2025, the Tribunal sent the listing link for this hearing. The Respondent replied on 11 July 2025 (12:58am) by way of an email from Nigel Hook, Director of TradeSun Ltd, to inform that he is based in California and a US Citizen and that this hearing is listed for 2am in the morning for him and so he would not be able to attend he requested the hearing be rescheduled to late afternoon UK time.

The Application for Postponement

7. The Tribunal decided that in accordance with r.47 of the Employment Tribunal Rules 2024, this hearing would proceed in the absence of the Respondent.

8. In making the above decision the Tribunal noted that the listing notice, dated 28 February 2025, was clear that the present hearing was listed to determine remedy and if the Respondent intended to oppose it should attend. On 10 July 2025, at 10:29, the Tribunal sent an email to the parties confirming the listing of this hearing and details on how to join the remote link. The

Respondent replied on 11 July 2025 (12:58am) by way of an email from Nigel Hook, Director of TradeSun Ltd, to inform that he is based in California and a US Citizen and that this hearing is listed for 2am in the morning for him and so he would not be able to attend he requested the hearing be rescheduled to late afternoon UK time.

9. On the morning of the hearing, Andrew Hook attended to convey the information in the aforementioned email but made it clear he could not make representations on the company's behalf. He remained with the consent of the Claimant and the Tribunal to report back to Nigel Hook.

10. The Tribunal decided that the parties had more than sufficient notice of the hearing and given the delay in the claim to date it was not appropriate or in the interests of justice to incur further delay by relisting this hearing. The Tribunal also noted, in coming to that decision, that it had received the Respondent's written application for an extension of time to file its response and its proposed response (on form ET3). Thus, the Tribunal could take into account the information in those documents.

The Application for an extension of time

11. On 24 June 2025, the Respondent applied for an extension of time to file a response as well as, on the same date, filing its proposed ET3 response. In the application the Respondent confirmed to the Tribunal, in like terms to its letter of 6 April 2025, that it had only received the claim documentation from PFK Francis Clarke on 10 March 2025, it had written promptly to the Tribunal once received, and informed it wished to defend the claim.

12. The Respondent, therefore, did not file a response until 24 June 2025 and is outside the 28 days required in r.17(1) of the Employment Tribunal Rules 2024 ("ETR")

Submissions of the Parties

13. In its written submissions the Respondent made the following submissions in support of the application:

    a) It was aware the claim was out of time.

    b) The response was only out of time because the documentation had been sent to PFK Francis Clarke, who were the Respondent's accountants and had never been authorised to accept service.

    c) The Respondent wrote to the Tribunal promptly after it had been sent the claim papers.

d) It maintains that the Claimant was fairly dismissed and believed that the matter had been resolved by way of early conciliation through ACAS.

e) It would be in the interests of justice to allow the Respondent to defend the claim.

14. In oral submissions the Claimant said:

a) The claim papers were properly served on the address for service for the Respondent. PFK Francis Clarke are listed on companies house as the Respondent's registered address in the UK and PFK Francis Clarke are the Respondent's agents. The Claimant knows this because he set the company up and made those arrangements. Any failures of an agent is a failure of the Respondent.

b) The Respondent's response provides a weak defence to the claim and there is no response as to why his redundancy was fair or a fair process was followed.

c) Whilst it was accepted that there would be prejudice to the Respondent if it was unable to defend the claim, there was also prejudice to the Claimant in the further delay in resolution of his claim, which has already been substantial.

The Law

15. Under Rule 5(7) of the Employment Tribunal Rules 2024 ("ETR"), the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

16. Rule 21 ETR provides:

(1) A respondent may make a written application to the Tribunal for an extension of time for presenting a response.

(2) The application must—

a) set out the reasons why the extension is sought,
b) except where the time limit has not yet expired, be accompanied by a draft response, or an explanation as to why that is not possible, and
c) specify if the respondent wishes to request a hearing.

(3) A claimant may within 7 days of receipt of a copy of the application give reasons in writing to the Tribunal explaining why the application is opposed.

(4) The Tribunal may determine the application without a hearing.

(5) If the Tribunal refuses to grant an extension of time, any prior rejection of the response must stand. If the Tribunal grants an extension of time, any judgment issued under rule 22(2) (effect of non-presentation or rejection of response, or case not contested) must be set aside and rule 22(3) ceases to have effect.

17. Rule 41 ETR provides:

(1) The Tribunal may regulate its own procedure and must conduct any hearing in the manner it considers fair, having regard to the overriding objective.

(2) The Tribunal must seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence.

(3) The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

(4) This rule is not restricted by any other rule contained in this Part.

18. In Kwik Save Stores Ltd 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". The case established that an Employment Judge should always consider the following three factors. First, the explanation supporting an application for an extension of time. The more serious the delay, the more important it is that the Employment Judge is satisfied that the explanation is honest and satisfactory. Secondly, the merits of the defence. Justice will often favour an extension being granted where the defence is shown to have some merit. Thirdly, the balance of prejudice. If the employer's request for an extension of time was refused, would it suffer greater prejudice than the employee would if the request was granted?

19. This guidance in Kwik Save was approved by reference to the subsequent 2013 Rules in Office Equipment Systems Ltd v Hughes UKEAT 0183/16/ JOJ. The learned editors of the IDS Employment Law Handbooks, in Vol.10, paragraphs 6.14-6.20 take the view that that this test still applies under the 2024 rules.

20. I took into account the overriding objective under rule 3:

> (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
>
> (2) Dealing with a case fairly and justly includes, so far as practicable—
>
> a) ensuring that the parties are on an equal footing,
> b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,
> c) avoiding unnecessary formality and seeking flexibility in the proceedings,
> d) avoiding delay, so far as compatible with proper consideration of the issues, and
> e) saving expense.
>
> (3) The Tribunal must seek to give effect to the overriding objective when it—
>
> a) exercises any power under these Rules, or
> b) interprets any rule or practice direction.
>
> …

Discussion and Decision

21. Applying these principles in this case I come to the conclusion that the application to extend time should be allowed.

22. The first response from the Respondent was received on 6 April 2025 and the draft response was received on 24 June 2025, some 4 months and 6 months respectively after the date it should have been received.

23. The delay is significant and serious. The explanation that the Respondent's accountant failed to send the papers carries little weight. I accept the Claimant's point that as agents they were obliged to ensure the papers were sent on expeditiously. Further, the Respondent's point that the address of PFK Francis Clarke was not the address for service does not take it very far given the address for service provided in the now filed ET3 response is the same address as the address to which the papers were in fact sent. Were this the sole element of the test under r.21 ETR applying Kwick Save I would likely have refused the application.

24. On considering the draft response there is a clear dispute of fact as to what occurred in the lead up to the Claimant's dismissal and a real issue to be

considered at a final hearing. I do consider that the ET3 response approaches the defence of to the claim in something of a 'scattergun' approach and makes a number of defences, some which would appear more in line with dismissal on grounds of capability rather than redundancy (which the letter from the Respondent to the Claimant, dated 22 July 2024, informs is the reason for dismissal), but it does appear that there may be (and without expressing a view as to whether it would be likely to succeed at a final hearing) some merit in some of the response, and in particular the suggestion that efforts were made to reassign the Claimant's role after it became untenable due to lack of capital coming into the business. Accordingly, the response is not devoid of merit which weighs in favour of allowing the extension of time.

25. The strongest factor weighing in favour of an extension of time, and which combined with the relative merits of the response and which I consider leads to the conclusion that I should extend time, is the balance of prejudice.

26. In terms of prejudice to the Claimant, I appreciate and accept that this will further delay his claim and that weighs against an extension of time. But the only other prejudice to the Claimant is losing the potential windfall of a default judgment against the Respondent and that he will have to prove his case.

27. For the Respondent the prejudice is significant as it would not be able to defend the claim against it and would be liable for a potentially large sum of money without being able to challenge the Claimant's case.

28. There is no suggestion that a fair trial cannot be conducted.

29. Undertaking the balancing exercise, in my view, the Respondent would be prejudiced to a greater extent if the application is not allowed than the Claimant if it is not allowed.

Conclusion

30. Accordingly, I allow the application for an extension of time and the Respondent's response is accepted.

31. There has been no judgment issued under r.22 ETR and thus no action to set aside judgment under r.21(5) ETR is required.

32. I have also today made case management orders by way of a separate order.

Employment Judge David C. Gardner
Dated: 14 July 2025
Sent to the parties on:
6 August 2025

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For the Tribunal Office