



EMPLOYMENT TRIBUNALS

Claimant: Mr M Sherwood

Respondent: Baldwins Crane Hire Ltd

Heard: at Leeds by CVP

ON: 6 May 2026

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Ms J Hale, Consultant

Respondent: Ms I Egan, Counsel

JUDGMENT

Time is extended in which to file a response by 154 days and the Judgment dated 27 April 2026 is set aside.

REASONS

1. Claim

1.1. Unfair dismissal.

2. Issues

2.1. Is the respondent entitled to an extension of time for presenting a response?

2.2. If so shall the Judgment already made be set aside?

3. The Law

3.1. The Tribunal has to have regard to the following provisions of the law:

Rule 21(1) Employment Tribunal Procedure Rules 2024: A respondent may make a written application to the Tribunal for extension of time for presenting a response ...

(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) (... rejection of response ...) must be set aside and Rule 22(3) ceases to have effect.

- 3.2. In **Kwik Save Stores Limited v Swain and Others [1997] ICR 49** it was held that the Tribunal has a discretion to take all matters into account and consider:

3.2.1. The explanation for the delay;

3.2.2. The merits of the defence;

3.2.3. The balance of prejudice.

Cases have to be dealt with fairly and justly.

4. **Facts and Submissions**

The Tribunal having carefully reviewed matters both oral and documentary before it finds the following (proved on the balance of probabilities and subject to the submissions).

- 4.1. We heard evidence from Mr D McDonald, a senior executive with the respondent. Mr McDonald was given the task of responding to the claimant's claim, which he was not happy to do, as this was not within his skill set. He thought that all he needed to do was to refer the matter to the respondent's insurance brokers who the respondent used for legal matters. On the first occasion they were unable to help and as there was a strict time limit Mr McDonald had no option but to take the matter into his own hands. The claimant's claim was received by the respondent some time after 4 November 2025 but Mr McDonald did not receive the papers from his boss until 26 November 2025, the deadline for filing a response being 2 December 2025. Mr McDonald did not read the instructions from the Tribunal for filing a response and simply got the response process wrong. Therefore, the Employment Tribunal purported to reject the response.
- 4.2. It turned out that there was a mix up at the Tribunal in that it sent the notice of rejection to the respondent's incorrect email address.
- 4.3. During the process the respondent failed again to instruct its insurance brokers. In or about 28 April 2026 the rejection of the response came to light and up to that time from 2 December 2025 the respondent knew nothing about the fact that the response had been rejected on, as it happened, 3 December 2025. It should also be said that in that period, that is between 2 December 2025 and 28 April 2026, the respondent was not proactive in enquiring of the Employment Tribunal what had happened to the response.
- 4.4. On 28 April 2026 a Rule 22 Judgment was entered and the listed hearing of today was converted to a remedy hearing. By 29 April 2026 the respondent instructed solicitors and the process was instigated in relation to the application to extend time.
- 4.5. All in all the delay between the deadline of final response and today is 154 days.
- 4.6. So far as the evidence between the parties is concerned there is considerable conflict. It is not necessary to make findings of fact nor desirable to do so were the matter to go to trial. An example of the difference is the date of dismissal. The respondent says this took place on 7 February 2025 in its draft response. In its rejected response the

respondent agreed with the claimant's version of dismissal being 15 August 2025. There is also much difference whilst the claimant was on sick leave as to who was more caring or attentive, the respondent or the claimant.

5. Determination of the Issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. There is a Judgment. There is now an application for an extension of time in which to file a response.
- 5.2. Referring to the explanation that we have heard concerning delay, there was the ignorance and inactivity of Mr McDonald. There was also the poor performance of their insurance brokers. If these matters stood alone then there might have been an argument for refusing to grant an extension and for setting the Judgment aside. However, it seems that the real reason for the delay was the Tribunal's use of the wrong email address for the notice of rejection. This weighs heavily in the respondent's favour but the respondent should for the future carefully consider its processes in cases like this.
- 5.3. It is the merits of the defence which we should consider. Looking at the draft response, which I saw for the first time this morning, but not forgetting the rejected response, they throw up considerable conflict with the claimant's documentation, of which most, as I understand it, constitutes an unamended claim, so much so that this is not so much a case of the merits but more a case of strong differences between claim and draft response.
- 5.4. I still have not seen the claimant's Schedule of Loss, but he claims in his claim form £75,000.00 Whilst the claimant may not succeed, this is a substantial sum and to lock the respondent out would mean substantial prejudice.
- 5.5. In all the circumstances, having regard to fairness and justice, the matter that tips the scale is the long period for which the respondent did not find out that the first response was rejected. The respondent should nevertheless find itself fortunate because of what did not happen between 2 December 2025 and 28 April 2026.
- 5.6. Therefore, time is extended in which to file a response by 154 days and the Judgment dated 27 April 2026 is set aside.

Approved by Employment Judge Shulman

Date: 27 May 2026

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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