



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000708/2026

Held by Cloud Based Video Platform at Aberdeen on 6 August 2026

Employment Judge Hendry

Mr K Young

**Claimant
Not Present &
Not Represented**

Sunbelt Rentals Limited

**Respondent
Represented by
Ms L Evanson,
Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal accepts the late lodging of the ET3 and allows the case to proceed as a defended cause.

REASONS

1. The claimant raised proceedings for unfair dismissal and whistleblowing. The claim was not initially defended. A Rule 22 Judgment could not be granted on the material before the Tribunal. A preliminary hearing was arranged for 6 August 2026 to discuss future procedure.
2. The respondent's solicitors wrote to the Tribunal on the 26 May 2026 having received a copy of the Notice of Hearing seeking an extension of time to allow them to lodge an ET3. They said:

"Upon receiving the notice of Preliminary Hearing, the Respondent made immediate enquiries to locate the original ET1 claim form. Despite doing so,

no copy of the ET1 has been located. It appears that the Claimant directed the claim to an incorrect address (namely the Inverness plant and tools depot) rather than to the correct address for the Inverness Traffic depot from which the Claimant was employed. The preliminary hearing notice itself was similarly delivered to the plant depot and was only passed to the Traffic Team Supervisor last week and passed to the Respondent's HR team on 26 May 2026, with the Respondent instructing solicitors immediately upon becoming aware of the position."

3. The hearing took place on the 6 August 2026. The claimant did not attend. I instructed the clerk to make enquiries and she responded that she had tried to contact the claimant on the telephone number he had provided but had been unable to make contact. I checked the Notice of Hearing and then I decided to proceed with the hearing.
4. Counsel for the respondent company suggested that it was appropriate for the Tribunal to consider the late filing of the ET3 even in the absence of the claimant. We clearly did not know the reason for his non-attendance but if the ET3 was allowed to be received late he could either seek a reconsideration of any decision or indeed appeal. I indicated that she should proceed to address me on the application.
5. Counsel made reference to the hearing bundle that had been lodged and to the factual background. She began by pointing out that the claimant had used the "Warrington" address for the company in correspondence with ACAS but had used an address in Inverness in the ET1. This was a depot. She also pointed out that the name of the company was incorrect both in the Acas certificate and in the ET1 and should properly be Sunbelt Rentals Limited. I indicated that the papers would be changed to reflect this.
6. The Tribunal was then taken through the apparent factual background and the enquiries that the respondent's managers had made. The long and short of it was that they had not received the ET1 and were unaware of the proceedings until alerted by correspondence from the tribunal about today's hearing. They had then acted quickly and prepared a detailed response. She referred me to the well-known case of **Kwik Save Stores Ltd v Swain** [1997] ICR 49 EAT and also to a more recent authority of **Costco Wholesale UK Ltd v Mr Jaiden Nash** [2026] EAT 85. H.H.J.Taylor commenting on **Kwik Save** said the following:

"....a more generous approach is generally taken when considering an extension of time in which to submit a response to a claim than to an extension of time for the submission of the claim itself. The time limit for the submission of a claim is jurisdictional whereas the time limit for a response is essentially procedural. A respondent

does not initiate litigation and should not ordinarily be shut out from advancing an arguable defence as a result of honestly admitted and explained procedural default, unless that default has caused significant prejudice to the other party or demonstrates wilful disobedience in compliance with the ET Rules or directions of the Employment Tribunal. While not stated expressly, this point is implicit in the judgment.”

7. I was then addressed on what I should regard as being the important issues as suggested by the authorities namely that there had been no deliberate delay on the part of the respondent company. This was simply an unexplained mishap. As soon as they were aware of the proceedings they quickly lodged grounds of resistance. These grounds are detailed. In relation to the merits the respondent company has clearly stated “colourable” defence to the proceedings. It would be unjust if they were not allowed to defend the proceedings and the claimant obtain a “windfall”. This was not a case, she suggested, where they were not engaging in the employment tribunal process or wilfully ignoring steps. Further she submitted that there was no prejudice to the claimant. The claim was at an early stage as no evidence had been heard and no final hearing arranged. Other than having to proceed with a claim that is now contested he had been put to no disadvantage in her submission. All of these matters favoured allowing the ET3 to be received late and for the case to proceed as a defended cause.

8. In relation to further case management she observed that the parties’ respective positions appeared relatively clear. There did not appear to be any preliminary issues. **She agreed with my observation that the case should now proceed to be listed for a full/final hearing.** Dates listing letters will be sent to identify appropriate dates.

Decision

9. **The Employment Tribunal Procedure Rules 2024 deal with extending time as for lodging an ET3 as follows:**

“Applications for extension of time for presenting response.

21.—(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.”

10. The Rule should be interpreted in accordance with the Overriding Objective.
11. The Tribunal is given a wide discretion to decide if a party can be allowed to defend proceedings despite the expiry of the time limit for lodging grounds of resistance. The Tribunal needs to consider the whole circumstances leading to the default and the merits of the claims being made and possible defences. It must balance any prejudice to the claimant and to the respondent in the action it takes.
12. In the present case there are clear grounds to support the respondent's Counsel's assertion that things had gone wrong in some way and the ET1 had not been received by the company. Their position was that the wrong address had been used. The proceedings were not served at the registered office in Warrington (the address used in the ACAS certificate) or at the claimant's place of work but at a yard/depot in Inverness.
13. I do not place much significance on the minor error made in describing the company's correct name in the ET1 although that is a matter that I have addressed. In short, I accept that there are good reasons for the delay in lodging the ET3 and (without considering the merits) a cogent possible defence to the proceedings. As Counsel observed there has been no evidence led and there is no obvious prejudice to the claimant in the delay occasioned by the late lodging of the ET3 other than having to contend with the fact that the claim is now defended. The circumstances essentially appear to amount to the sort of mishap that can often occur when proceedings are served at workplaces rather than at registered offices or main offices where there are administrative staff to deal with tribunal or court proceedings. In any event even if there was some fault attributable to the respondent company, which is unknown, the circumstances are such that the balance of prejudice would favour the acceptance of the ET3 at this stage in proceedings.
14. I have issued this decision without knowing why the claimant was unable to attend the hearing and without his input. I do not know if he opposed the extension and if so on what grounds. **I would draw his attention to Rules 69 and 70. He can seek reconsideration of this Judgment if he disagrees with it and has a basis for that view but has 14 days within which to do so.**

Date sent to Parties

14 August 2026