



# EMPLOYMENT TRIBUNALS

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**Claimant:** Ms E Kirk  
**Respondent:** Pontefract Services Limited  
**Heard at:** Leeds On: 21<sup>st</sup> July 2017  
**Before:** Employment Judge Lancaster

## Representation

**Claimant:** Mr S Lewinski, counsel  
**Respondent:** Mr A Famutimi, consultant

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## JUDGMENT

1. The time for the presentation of the Response is extended under rule 20 Employment Tribunals Rules of Procedure 2013 and the draft Response submitted on 20<sup>th</sup> July 2017 is accepted.
2. The remedy hearing listed for today is therefore vacated and converted to a preliminary hearing.
3. The Respondent is ordered to pay the Claimant's costs of today's hearing in the sum of £1980.00

## REASONS

1. The claim was validly served on the Respondent's registered office address on 4<sup>th</sup> April 2017.
2. No Response was presented by the due date of 2<sup>nd</sup> May 2017. Nor was there any reply to letters sent by the Tribunal to that address on 22<sup>nd</sup> May, 23<sup>rd</sup> May, 2<sup>nd</sup> June or 27<sup>th</sup> June 2107.
3. None of this correspondence has been returned to the Tribunal.
4. In default of a Response the case was listed for a remedy hearing.
5. I accept the Respondent's evidence that it did not in fact see any of the communications from the Tribunal and that the first Mr Tariq knew of these proceedings was when, on 7<sup>th</sup> July 2017, he was approached by a third party offering

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to represent him at the forthcoming hearing. Mr Tariq then contacted the Tribunal immediately by email the same day and received a reply on 14<sup>th</sup> July 2107 confirming that the case was listed for remedy hearing as no Response had been filed. Peninsula then came on record from the Respondent on 18<sup>th</sup> July 2017 and submitted the rule 20 application on 20<sup>th</sup> July 2107.

6. I find, however, that the reason why the Respondent was unaware of these proceedings was entirely due to its own unreasonable default. The registered office address, which remains current to this day, is Mr Tariq's former home address at 3a Alderglen Road Manchester. Since November 2016 that address has been operated as a guest house providing bed and breakfast. I heard evidence from the manager of that guest house, Mrs Lisa Wilson that she was wholly unaware that it was the registered office from the respondent or, until very recently also for two other businesses controlled by Mr Tariq. Mrs Wilson's usual practice was, she says to re-post any mail that was not for her marked "return to sender". That clearly however did not happen in respect of any of the 5 items sent by the Tribunal. In any event, and most significantly, no arrangements whatsoever had been made for any post delivered to that address to be forwarded. It may be that Mr Tariq had instructed his accountant to change the registered office address for this Respondent as well as for his other two companies although his email instructions exhibited with his witness statement are not clear. As at 2<sup>nd</sup> June 2017 I am however satisfied from those documents that Mr Tariq was fully aware that no change of address had in fact been effected. Nonetheless he took no steps to ensure that, pending the actual alteration of Companies House records, post had not been or was not still being received at the old address.
7. Despite Mr Lewinski's arguments I am not satisfied that the draft Response now submitted can be said to have no reasonable prospect of success. I do however consider that in respect of the unfair dismissal and the disability related discrimination complaint which also arises out of the termination it has little reasonable prospect of success. That is a matter which is addressed in a separate deposit order.
8. I accept that there is prejudice to the Claimant in the delay to these proceedings, and in particular that that delay will cause her upset. However I do not consider that that outweighs the prejudice to the Respondent in not being able to put forward an arguable defence on the merits, albeit that in respect of two out of the three claims it has, in my view, little reasonable prospect of success.
9. On balance therefore I consider that it is in the interests of justice to allow the application and accept the late Response. There is an explanation as to why the papers were not received and the Respondent did act promptly when the claim was in fact brought to its attention. It cannot be said, particularly not at this stage without having heard any evidence, that the defence on liability is doomed to fail. There certainly does appear to be a potential argument on remedy. The Claimant had had a significant period of ill health absence and even though procedural irregularities are apparent on the face of the papers in the bundle before me it may be that dismissal at some stage in the near future would have been fair even if it was not at the time when the decision was taken. Although there has been delay it is not excessive. The claim was not in fact presented until 4 months after the date of dismissal and a further 4 months have now elapsed since then. The preliminary hearing for case management that was originally listed for 21<sup>st</sup> May 2017 has effectively been conducted today so that the case is only 2 months behind schedule.

10. I further find that the Respondent has acted unreasonably in failing to take any appropriate steps to ensure that service of legal proceedings at its registered office was properly and promptly processed. That is unreasonable conduct in the course of these Tribunal proceedings which has in the event led directly to the postponement of the listed remedy hearing at very short notice. The Respondent is therefore potentially liable to have a costs order made against it under rule 76.
11. I consider it appropriate to exercise my discretion to make such an award in all the circumstances of this case. Indeed in the rule 20 application itself it is conceded that the additional and unnecessary expenditure incurred by the Claimant can be met by way of costs rather than by disallowing the Response.
12. The costs are proportionately limited to counsel's attendance at today's hearing and the additional costs of the solicitor in dealing with the late application and instructing counsel on that issue. The costs of the solicitor's attendance at the 21<sup>st</sup> May preliminary hearing (which was kept in the list in order to give directions for the remedy hearing) are not properly recoverable as they are subsumed into the costs of today's hearing when, in the event case management directions for the final hearing have been given.
13. Although I may have regard to the paying party's ability to pay I am not persuaded in these circumstances that it is appropriate to do so at all. The respondent is a corporate entity, not an individual, and as a result of its entirely avoidable default additional costs have been incurred. In any event I have heard that the Respondent business is solvent, has no debts and that it has made an operating profit in its first year of trading even if its fixed costs have been higher than expected. Apparently Mr Tariq invested £50,000 into the business but has elected not to draw a salary. The indications are therefore that the Respondent is in fact well able to absorb the costs order even though this may mean relying further on the goodwill of its owner.
12. The Respondent will pay the costs in their entirety. That is 2 hours preparation at the solicitor's hourly rate of £200.00 plus counsel's brief fee for the listed 3 hour hearing which is £1250.00. Those sums are liable to VAT and the total figure is £1980.00

Employment Judge Lancaster

Date: 21 July 2017