



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mr S Obano

Social Pantry Limited

WRITTEN REASONS FOR EXTENSION OF TIME FOR RESPONSE

1. The Claimant was employed by the Respondent as a Chef de Partie from 4 to 28 December 2017. He has raised claims of direct race discrimination and/or harassment related to race, the alleged detriments being comments made during the course of his employment and his resignation (which he says was caused by the comments and amounts to constructive dismissal).
2. He has also raised claims for breach of contract (wrongful dismissal), unauthorised deduction from his wages and holiday pay. The holiday pay claim appears to be put on the basis of unauthorised deduction from wages and/or breach of contract and/or under the Working Time Regulations 1998.
3. The Respondent denies all claims.
4. The Respondent did not present its response to the claim within the relevant time limit and by email on 11 May 2018, to which a draft ET3 was attached, it applied for an extension of time to present its response.
5. That application was heard at a Preliminary Hearing ('PH') on 2 October 2018. The Respondent was represented by counsel and a witness, Lorraine Wait, its HR Manager, also attended to give evidence. The Claimant did not attend and although attempts were made by the tribunal clerk to contact his representative those attempts were unsuccessful. The PH therefore proceeded in the Claimant's absence.
6. First, the tribunal heard the Respondent's application to extend time for presentation of its response. The Respondent called Ms Wait and she gave

evidence by reference to a written witness statement. The tribunal then tested her evidence by questioning her. The Respondent made submissions and the tribunal then deliberated and announced its decision to allow the application and gave oral reasons for that decision. The tribunal then made case management orders for the further progress of this case up to and including a final hearing.

7. The written record of the PH and case management orders was sent to the parties on 9 November 2018. By email on the same date the Claimant requested written reasons for the decision to extend time for presentation of the response. Those reasons are set out below.
8. The Respondent's evidence, which the tribunal accepted, was that on 16 January 2018, the day on which the ET1 was presented to the tribunal, Ms Wait received an email from the Claimant's representative which included a copy of his claim. Ms Wait contacted the tribunal on the same day and was told to wait for formal notification of the claim from the tribunal. She had heard nothing by mid-February 2018 and so contacted the tribunal again and was again told to await formal notification because the claim had not been formally accepted yet and there was a large backlog. Ms Wait was told that she was unlikely to hear anything until the middle of 2018.
9. On Friday 13 April 2018, at about 5.30pm, Ms Wait received an email from the Claimant's representative which referred to a PH. She knew nothing about any PH, still not have seen any formal notification of the claim from the tribunal. She rang the tribunal the following Monday, 16 April 2018, and followed this up with an email on the same day, saying that the Respondent had received no formal notification of any claim. The tribunal rang her the same day to confirm that the PH listed for the next day had been postponed. The tribunal also sent to the Respondent the claim and a blank ET3.
10. Thereafter Ms Wait attempted to obtain legal advice and assistance and on 25 April 2018 she spoke with solicitors with whom the Respondent has an arrangement who were able to assist. The solicitors then investigated the substance of the claim and prepared a draft ET3 which, as noted above, was sent with the Respondent's application on 11 May 2018.
11. The Respondent says, and the tribunal has accepted, that it did not receive any formal notification of the Claimant's claim from the tribunal until 16 April 2018. The delay from then until 11 May 2018 is clearly less than ideal but is, in the tribunal's judgment, understandable. It took some days for Ms Wait to speak with the solicitors now representing the Respondent; she knew that the Respondent had an arrangement with them but not that it covered tribunal litigation and she had spent some time trying to find a lawyer to assist before contacting them. Ms Wait cannot explain the delay from 25 April to 11 May 2018 but the tribunal notes that the Claimant makes a number of serious allegations in his claim which would require some time to investigate with the relevant individuals.
12. The tribunal reminded itself of the recent guidance on the exercise of its discretion to extend time for presentation of a response given by Simler J (as

she then was) in *Grant v ASDA* (UKEAT/0231/16, unreported, 16 March 2017). The tribunal must take account of all relevant factors, including any explanation for the delay, the merits of the Respondent's defence and the balance of prejudice each party would suffer depending on whether the extension is granted. The tribunal must also bear in mind the overriding objective.

13. In this case, as noted above, the extent of the delay is less than ideal but the tribunal has accepted the reasons for it as put forward by the Respondent. The tribunal also found that the Respondent has put forward, in its response, a credible defence to each of the claims made by the Claimant including a denial of the various comments alleged by the Claimant and an alternative, non-discriminatory, explanation for the Claimant's resignation. The Claimant would clearly suffer prejudice if an extension of time were granted, in that he would be faced with a substantive defence to his claim, but if the extension were not granted there would also be significant prejudice to the Respondent. It would not be able to defend itself against claims to which, on the face of its response, it has a credible defence. The tribunal has also taken into account that the allegations made by the Claimant are of a serious nature but, conversely, the consequences of findings in the Claimant's favour would be serious for the Respondent, an organisation which relies on its reputation as a diverse employer supporting ex-offenders. That is not to say that the Claimant's allegations may not all be true, but if an extension of time is granted whether or not they succeed would be a matter for a tribunal to determine at a final hearing having heard evidence from both sides; if an extension is not granted then the Claimant would succeed without his allegations being tested.
14. The tribunal considered the points made by the Claimant in correspondence, notwithstanding his absence from the PH, but in all the circumstances and taking into account the overriding objective, including the duty to deal with cases fairly and justly for both sides, it concluded that an extension of time for presentation of the response in this case should be granted until 11 May 2018. The ET3 was presented within that extended deadline and therefore this case will proceed to a final hearing.

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Employment Judge K Bryant QC
26 January 2019 London South