



# EMPLOYMENT TRIBUNALS

## COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote which was not objected to by the parties. The form of remote hearing was V. A face-to-face hearing was not held because [insert e.g., it was not practicable and all issues could be determined in a remote hearing]. The documents that I was referred to are in a bundle of 96 pages and a 4-page statement, the contents of which I have recorded. The order made is described at the end of these reasons.

*A: audio whether partly (someone physically in a hearing centre) or fully (all remote)*

*V: video whether partly (someone physically in a hearing centre) or fully (all remote)*

*P: paper determination which is not provisional*

*T: triage provisional decision i.e. after ENE on the papers*

### Claimant

### Respondent

**Mr NR Argent**

**v**

**Waste Water Solutions (London)  
Ltd**

**Heard at:** Watford (CVP)

**On:** 25 June 2021

**Before:** Employment Judge Allen

### Appearances

**For the Claimant:** Unrepresented (but assisted by Mrs Argent)

**For the Respondent:** Ms Amir, litigation consultant, Penninsular

## JUDGMENT

The respondent's application to extend time to file a response under rule 20 and set aside the rule 21 judgment for the claimant succeeds

## REASONS

1. This hearing is listed to consider remedy; judgement having been given under Rule 21 for the claimant.
2. On 23 June 2021 the tribunal received the respondent's response to claim together with an application to file it out of time under Rule 20 and then set

aside the default judgment (Rule 20(4)); OR to reconsider the judgment under Rule 70 and postpone today's remedy hearing under Rule 30(1).

3. Dealing first with Rule 70 application for reconsideration of judgment. Rule 71 requires that an application to reconsider a judgment of the tribunal must be made within 14 days. This is not in my view a Rule 70 application situation; and if it were it would be out of time.
4. I am satisfied that the respondent's application under Rule 20 is the correct approach to this issue.
5. On 17 September 2020 the court wrote to the respondent at the above referred to address. Ms Thornton gave evidence today that she thought the respondent had not received this letter. Ms Thornton explained that since the respondent's premises are located on a farm this has caused some difficulty with their post. Having said that the respondent's representative has provided a bundle which includes at page 19 a copy of the court's letter to the respondent of 17 September 2020. It would appear in the circumstances that Ms Thornton is mistaken.
6. On 3 January 2021 the claimant was notified that no response was given by the respondent and he should provide details of loss. The letter was copied to both Acas and the respondent.
7. On 5 March 2021 the respondent was written to and informed that because there had been no response judgment may now be issued.
8. On 18 April 2021 the respondent was notified by post of today's hearing. Each letter to the respondent since 3 January repeats that no response has been entered. The appropriate postal address for the respondent was checked and confirmed during today's hearing. I am satisfied that the court had the correct postal address for the respondent and used it in all its correspondence.
9. Ms Thornton (office manager for the respondent) explained that a director, Mr Bennett decided to instruct solicitors in November 2020; she didn't know why the decision was made then.
10. Mr Argent told me about an email exchange he had with Mr Bennett on 15 November 2020. It is significant that on that day Mr Bennett asked Mr Argent what was happening with the 'Tribunal' and Mr Argent responded that the tribunal claim had been accepted.
11. That Mr Bennett asked Mr Argent what was happening about the 'Tribunal' claim suggests that he was aware, at the very least, a claim was about to be made. The court's letter of 17 September 2020 included with the

respondent's bundle makes it more likely than not Mr Bennett was aware a claim had been lodged with the tribunal. That Mr Argent responded it had been made and accepted by the tribunal left Mr Bennett in no doubt of the status of Mr Argent's claim.

12. In the circumstances I am not persuaded that in September 2020 the respondent was confused about what was required of it, the letter from the court makes it plain that if the respondent wished to contest Mr Argent's claim it must do so by 15 October 2020.
13. The respondent's representatives were engaged on 22 November and it was already out of time to file its response; in the circumstances it is reasonable to suppose that the email exchange on 15 November was what prompted the respondent to engage appropriate representation.
14. Ms Thornton told me that she had seen a draft 'response to claim' in January 2021 but couldn't explain why it had not been filed with the court. Having taken instructions Ms Amir on behalf of the respondent's representatives conceded that the response which Ms Thornton had approved in January 2021 was not filed with the court and she was not in a position to offer an explanation.
15. Mr Argent, very reasonably, asked why Ms Thornton had not chased their representatives between 3 January 2021 and 18 April 2021. In this period the court sent 3 letters to the respondent. Ms Thornton could find no copy of the court's letter of 5 March 2021 and concluded that it may not have been received. There is no copy of the 5 March letter in the respondent's bundle and I accept the respondent may not have received it. Ms Thornton explained that the respondent's premises are on a farm; post is delivered to the perimeter of the property which has led to some correspondence going astray. Having appointed representation, it was reasonable for Ms Thornton on behalf of the respondent to expect their representatives to be getting on with the job. In the circumstances I make no criticism of Ms Thornton or the respondent for not chasing progress. Ms Thornton had after all in January approved a response to claim and returned it to the solicitors. Ms Thornton might reasonably have chased the solicitors had she received the court's letter of 5 March 2021 however there is no evidence that she did receive it.

### The Law

16. I have been referred to case law to assist me in light of the respondent's application today. Kwik Save Stores Ltd v Swain & others is a 1997 case and uses terms current at that time namely 'notice of appearance' instead of 'response'.
17. This case is authority for the principle that it is incumbent upon a respondent applying for an extension of time for serving a notice of appearance to put

before the tribunal all relevant documents and factual material on the merits of the application and its' defence. The appeal on that occasion was allowed on the grounds the tribunal chairman had erred in not considering the merits of the respondent's defence.

18. Office Equipment Systems Ltd v Hughes. In that case the employment tribunal concluded the respondent had been guilty of deliberate and intentional default in failing to lodge its response to the claim and its defence lacked merit. The appeal was partly upheld on the grounds that the ET had considered the first part of the defence but not the second.
19. I see no reason to conclude that there is any deliberate and intentional default on the part of the respondent in failing to lodge its response to the claim.
20. The respondent in the Office Equipment Systems case had raised 2 grounds of defence, only one of which had been considered by the tribunal. At appeal it was found that the 2nd of the grounds of defence did have merit.
21. I note the comment of the court that if the defence has some merit, justice will often favour granting the extension of the time limit.
22. The explanation for the delay which has necessitated the application for an extension is always an important factor in the exercise of the discretion. In other cases, the tribunal may form the view that the delay is the result of a genuine misunderstanding or an accidental or understandable oversight. In each case it is for the tribunal to decide what weight to give to this factor in the exercise of the discretion. In general, the more serious the delay, the more important it is for an applicant for an extension of time to provide a satisfactory explanation which is full, as well as honest.
23. It is well established that another factor to be taken into account in deciding whether to grant an extension of time is what may be called the merits factor identified by [Sir Thomas Bingham MR in Costellow v Somerset County Council \[1993\] 1 WLR 256](#) , 263:

*“a plaintiff should not in the ordinary way be denied an adjudication of his claim on its merits because of procedural default, unless the default causes prejudice to his opponent for which an award of costs cannot compensate.”*

*“Thus, if a defence is shown to have some merit in it, justice will often favour the granting of an extension of time, since otherwise there will never be a full hearing of the claim on the merits. If no extension of time is granted for entering a notice of appearance, the industrial tribunal will only hear one side of the case. It will decide it without hearing the other side. The result may be that an applicant wins a case and obtains remedies to which he would not be entitled if the other side had been heard. The respondent may be held liable for a wrong which he has not committed. This does not mean that a party has a right to an extension of time on the basis that, if he is not granted one, he will be unjustly denied a hearing. The applicant for an extension has only a reasonable expectation that the discretion*

*relating to extensions of time will be exercised in a fair, reasonable and principled manner. That will involve some consideration of the merits of his case.”*

24. Having said that I am not persuaded that in September 2020 the respondent was confused about what was required of them I am satisfied their thinking was misdirected by the fact they were still in negotiation with the claimant.
25. Delay – I am satisfied that the claimant is responsible for the delay in filing its response between 15 October 2020 (the date the response was due) up to the 3 January 2021 letter.
26. The response approved by Ms Thornton was returned to the solicitors and it is the solicitors who are responsible for the delay between January 2021 and June 2021. In the circumstances the respondent should not be disadvantaged by that delay.
27. Having reviewed the guidance contained in the case law referred to above I have also considered the merits of the defence. That defence contained in the response document does have merit; that is not to say it is bound to succeed; only that there is a case to be argued at a Full Merits Hearing.

Conclusion

28. The Respondent’s application for extension of time limit to file its response is therefore granted and the default judgment entered in accordance with Rule 21 is set aside.
29. This case will now be set down for a Full Merits Hearing.
30. Case Management Orders were made at today’s hearing and are attached to this judgment in another document.

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Employment Judge Allen  
Date: .....6/8/2021.

Sent to the parties on: .....6/8/2021.....

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For the Tribunal Office