



EMPLOYMENT TRIBUNALS

Claimant: Miss J Onazi

Respondents: 1. A1 Devlab Limited
2. Isaac Qureshi

Heard at: Liverpool (by CVP)

On: 19 February 2024

Before: Employment Judge Benson
(sitting alone)

REPRESENTATION:

Claimant: In person

1st Respondent: Mr B Hendley (Consultant)

2nd Respondent: Not in attendance

Judgment having been sent to the parties on 4 March 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues

1. I have considered the application which has been made by the first respondent in these proceedings, A1 Devlab Limited for an extension of time for their response to be accepted. The application was made on 6 December 2023
2. I have refused the application.

The Facts

3. The claimant initially contacted ACAS for the purposes of early conciliation on 7 February 2023, and an ACAS certificate was issued on 21 March 2023. There is a second respondent in these proceedings who has not filed a response nor made any application to extend time to do so.

4. The claimant filed a claim on 21 March 2023 and the response from both respondents was due on 2 May 2023. The claimant is content that the address she provided on the claim form for the first respondent was an address which the director of that company had directed that any important correspondence be sent to. It is noted that it is also the address which the first respondent provided on the draft response, which it now asks the Tribunal to accept. In any event, it seems that the proceedings continued without either respondent who did not put in a response, and there was a case management hearing in June 2023 which neither respondent attended.

5. In view of the ongoing lack of response from both respondents, in October 2023 the Tribunal ordered that the respondent should be sent papers relating to these proceedings at their registered office address, which was the address in Church Hill Road on 4 October 2023. Mr Hendley surmises that Croner contacted the first respondent, and it was that which caused it to take action in respect of the claim. Whether that is the position or not, no action was taken by the first respondent until 6 December 2023 when an application was made that the response be accepted out of time which was accompanied by a draft response. It is that application which is before me today.

6. Mr Sheikh is the sole director of the first respondent. He was unable to attend the hearing today as he was sitting an examination. He provided a very brief statement in which he explained why he did not file the response to the claim. Mr Sheikh says:

“I am the sole director of A1 Devlab Limited. I have been in that role since the year 2019. I first became aware of the Tribunal claim when I received Tribunal correspondence regarding a hearing date. I believe this was in late September or early October 2023. At the same time I was dealing with personal issues helping to look after my elderly parents who had lost their home. This left them and my siblings homeless.”

7. There is also a summary of this in the application which was made by Croner on behalf of the first respondent.

8. The draft response to the claim was also very brief. There is a general denial of all claims but the only explanation of the basis upon which the first respondent sought to defend the claim was that the claimant was not an employee of the first respondent. It says that the claimant's position was an arrangement between the second respondent and the claimant, such that the claimant was contracted by the second respondent to be his assistant, and that the dates of employment were between March 2022 and January 2023. It suggests that the claimant and the second respondent were in a personal relationship together and that the claimant was given notice of cancellation of her contract on 5 December 2022.

9. Upon hearing the explanation provided by Mr Hendley of the first respondent's position, the claimant advised that she had a written contract and in accordance with my request, produced a copy to the Tribunal and to Mr Hendley. That document is a detailed employment contract provided by the first respondent, A1 Devlab Limited. It has been signed and dated by both the first respondent and the claimant.

The Law

10. In considering the relevant law, the authority of **Pendragon PLC T/A Bramhall Bradford** which Mr Hendley has referred to is helpful, but it reminds the Tribunal that the principles identified in the key authority **Kwik Save Stores Limited v Swain** [1997] ICR 49 continue to apply. I am required to consider the employer's explanation as to why the extension is required, the balance of prejudice to both parties and the merits of the defence. Essentially, the discretion is a broad and I must consider whether it is just and equitable to allow the extension of time and for the response to be accepted.

Decision

11. Looking at each of these matters in turn.

12. I accept that there may have been a situation where the first respondent (by its director Mr Sheikh) did not get notification of the claim initially, even though it was sent to the same address as is stated on the response form now filed. He accepts however that he did have notice of it by late September or early October 2023. No action was taken by him to file a response until 6 December 2023 when he submitted the application for time to be extended. His reasons for not doing so are vague and without detail. I appreciate the situation in which his parent found themselves would have been concerning to him, but I am quite certain that he was not occupied for every hour of every day and the seriousness of his situation should have been apparent for him – he was director of a company and he would know that court proceedings are important and need to be responded to, particularly in the situation where he had already missed important deadlines.

13. I find Mr Sheikh's explanation weak and although I accept that he was not at the hearing today, and there is a reason why he could not attend, he was given the opportunity to provide his explanation and he has only done so in the vaguest of terms.

14. Looking at the balance of prejudice, this is a company which having considered the Companies House register, the director has applied to have struck off. It is not trading. The claimant has spent over a year pursuing this claim and preparing for hearings which have not proceeded because the respondent did not file a response and then, late in the day has sought to be permitted to defend the claim. If the response is accepted there will be a further delay to the claimant having an outcome to her claim.

15. In considering the balance of prejudice, I consider that more prejudice is caused to the claimant if I grant the extension of time. The only prejudice to the respondent is the inability to defend the claim in a situation where its defence as pleaded appears to have limited merit. The first respondent was given an opportunity to explain the basis of its defence in its draft response knowing that this was an issue which would be relevant in any application to extend time. The only substantive basis upon which it appears to be defending this claim is that the claimant was not an employee of the first respondent and yet there is a contract which says that she was.

Although that is not conclusive, and I appreciate there has not been any evidence formally heard, the claimant was able to produce a contract, signed and dated by both parties, when the issue was raised at this hearing, which evidences that she was an employee of A1 Devlab Limited.

16. In considering all relevant issues I refuse the application to extend time for a response to be filed. As such the response of the first respondent is not accepted, the claim will proceed, and it will be listed for a final hearing.

17. The first respondent may make representations on remedy if it wishes to but will not be able to defend these proceedings.

Employment Judge Benson

Date: 8 April 2024

REASONS SENT TO THE PARTIES ON

9 April 2024

FOR THE TRIBUNAL OFFICE

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