



EMPLOYMENT TRIBUNALS

Claimant: Mrs S A Lane

Respondents: (1) Dr A Kelley
(2) Dr A Shah
(3) Dr P Dunseath
(4) Dr A Noor
(5) Dr S Kleinberg
(6) Dr S Paneerselvam

Heard at Watford: by CVP **On:** 15 October 2024

Before: Employment Judge Isabel Manley

Appearances

For the claimant: Mr C Jeans, KC

For the respondents: Mr C Kennedy, counsel

JUDGMENT having been given to the parties orally on 15 October 2024 and reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and issues

1. This decision relates to case number 3304279/24. The claim is one of three brought by Mrs S Lane against her employers, the various doctors named above who trade as Wrafton House Surgery. The claims have been consolidated.
2. This was an application by the respondents to present the response in case number 3304279/24 out of time. Before the hearing I had been sent various documents and we needed to check and add to those at the beginning of the hearing. In brief, I had written submissions from both representatives and a bundle of documents. I had already seen some of the documents because I had been sent the tribunal's digital case file.

Background

3. To give a very brief overview, the claimant has presented three claim forms, all in 2024;
 - 4.1 One on 31 January 2024 under case number 3301422/24, where a response has been presented in time;

Case Nos: 3301422/24; 3304279/24 and 3306930/24

- 4.2 One on 24 April 2024, under case number 3304279/24, with which we are concerned today, where the response was due by 2 July 2024 but not received until 29 July 2024 with an application in the proper form for an extension of time; and
- 4.3 Thirdly, a claim presented on 22 July 2024, under case number 3306930/24, where a response has been presented in time.
- 5 Those claims have now been consolidated.
- 6 They are all age discrimination complaints. The claimant has been a Practice Manager for over 20 years for the respondent GP surgery. She remains in employment but, as I understand it, she is currently on sick leave. She did not attend the hearing today.
- 7 The application for an extension of time to present the response in what I will now call the Claim 2, is in the bundle of documents the claimant has sent, between pages 253 and 256. Again, if I can summarise, there is no particular reason for the response to have been provided late except that the current representatives of the respondents say they did not know there was such a claim until 21 July 2024, although the respondents, who were either without a representative at that point or had a different representative, were aware of it in early June. In any event, they provided dates for when the claim form was received (7 June) and seen by the respondents' trade union (9 June) and then these legal representatives (21 July, although they were instructed on 17 June), and asked, in the normal way, for an extension of time. The claimant was copied into that application.
- 8 The claimant's representative resisted the application for an extension of time and sent a detailed letter to that effect which I have seen which is also in the bundle between pages 260 and 262. I now summarise that as best I can. In effect, the claimant says the respondents have not provided an explanation for why the response was not presented within time. The claimant's representatives said that there is no explanation for why the response was not presented by the respondents or their trade union representative and that, in that case, the tribunal can find that they are disrespecting the tribunal processes and continuing the treatment of the claimant about which she has complained.

Law and submissions

- 9 There is a relatively large measure of agreement between the parties as to how I should determine this issue although, of course, their views diverge on what my decision should be. They agree that it is an exercise of my discretion, and they also agree that the leading case remains Kwik Save Ltd v Swain [1997] ICR 49. Although that case was decided under earlier tribunal procedure rules, it still contains useful guidance to tribunals when deciding whether to allow a response out of time. The judge should consider the reason for the delay; balance of prejudice and the merits of the defence. Importantly, the judge should consider all relevant factors so that any decision can be "*objectively justified on the grounds of reason and justice*".
- 10 The representatives also agree what the length of the delay is, and, in

broad terms, what tests I should apply. In summary, the legal position is that Rule 20 of the Employment Tribunal Rules of Procedure 2013 allows a respondent to make an application for the response to be accepted out of time, that is outside the 28 day time limit. The application must be in writing and copied to the claimant, which happened in this case, and the Rule also says that the Judge may determine that without a hearing. Rule 21 of the Rules goes on to say what follows in the circumstances of the response being neither presented or accepted.

- 11 As well as Kwik Save Stores, I also mentioned to the representatives a more recent case of which I was aware - Thorney Golf Centre v Reed and Reed [2024] EAT 96 (Thorney Golf Centre) which might throw some further light on the tests to be applied. As I have indicated, the question is how I exercise my discretion in deciding whether to allow the response to be accepted outside the time limit. I must consider the length of any delay and, as reminded in Thorney Golf Centre, should weigh in the balance, the extent of any prejudice that would be caused by allowing the response out of time, as well as any that would be caused to the respondent by not allowing the response to be accepted.
- 12 I now summarise the oral submissions that I heard.
- 13 In brief, the respondents' representative accepts that it is not a good explanation that has been provided by the respondents. It is said that it was a mistake; an oversight on their part. In relation to claim 2, in part at least, it is submitted that oversight or mistake may have happened because the claimant herself expressed claim 2 as being updating of claim 1. The respondents' representative said that I should pay particular attention to the balance of prejudice and the overriding objective. In particular in respect of the overriding objective considering what impact any decision to not allow the response to be proceed would have on the claims going forward. It is submitted by the respondents that the balance of prejudice firmly weighs in favour of allowing the response, in these circumstances, not least because the delay is relatively short and there is no impact on the way in which the claims will proceed.
- 14 The claimant's representative points particularly to the absence of an explanation by the respondents for why the response was not presented before the 28 days. It is submitted, I should consider the whole of the way in which the respondents have been dealing with the claimant as she has raised her concerns at work and, in particular, that she had written a number of detailed letters of concern but has received nothing in writing which deal with that. We discussed this and I have declined to look at those letters, as I felt it would not help me with the decision that I have to take and ran the risk of me looking at matters which are clearly going to be part of the evidence as the claims proceed. I had some concern that there might be some impact on those future hearings. The representative's primary submission was that I should be looking at the absence of explanation, including the fact that the respondents have chosen not to put in further details by way of witness statement or documentation with respect to the dates of when the claim form was received and who else looked at it and the decision, if one was taken, not to put in a response in time. In essence, the claimant's case is that this behaviour is part of ongoing mistreatment of

the claimant and a way of not engaging with her properly.

Conclusions

- 15 I have read the submissions. I read them carefully in a break and I have heard what both representatives said orally and considered those in coming to my conclusions.
- 16 I accept that the response, of course, should have been presented within time. Time limits are important in the employment tribunal and where at all possible, should be complied with because, if that does not happen, it affects how the case can run and can be severely prejudicial in some cases.
- 17 The response was not presented in time and it is agreed that it was 27 days late. The explanation provided is not a good explanation; but it is an explanation. I accept that the surrounding circumstances suggest that it was a mistake as the respondents did present responses in time to Claims 1 and 3. The length of the delay is relatively short.
- 18 The claimant's argument that this was a deliberate attempt to in some way get in the way of justice for the claimant is not really a credible argument, given that the respondents had already responded to the claims 1 and 3 and I cannot see why there would be any reason for them to fail to respond to claim 2. There is no doubt in my mind that the respondents do intend to defend this claim. On the face of it, they have an arguable defence to claim 2 as they do for the other two claims.
- 19 I need to take a much wider approach than just looking at the explanation. It is not the best explanation, but it is an explanation. So, what I have to look at is all the circumstances of the case. Looking first then at the question of prejudice. The claimant's representative accepted that he was not arguing that there was prejudice to the claimant and, indeed, there is none. This is an early point of these proceedings and this sort of delay, whilst not ideal, really has very little impact on a case like this. What would be clearly prejudicial to the respondents was that they could not defend that claim whilst they were in the process of defending the other two claims.
- 20 The other thing that it seems to me is relevant in considering this, which is an unusual case, is there are three claims with the one in the middle without a response. In a case like this where the claimant was still in employment throughout all of these claims and, indeed, remains so, presumably we are going to have arguments about whether there is conduct extending over a period for the age discrimination claim. It seems to me that it would be very difficult if we did not have a response in relation to, at the moment, what would appear to be the middle part of that period, although that might change with time.
- 21 The overriding objective is clearly in favour of allowing the response to be accepted late. It has no impact on how we proceed. In fact, it is almost certainly better that we can deal with case management matters now in the light of the response being allowed rather than, as the representatives suggested, having to list another hearing to decide how to separate claim 2 issues from claims 1 and 3. That would have a considerable impact on the

proceedings.

- 22 In light of all the circumstances, it is abundantly clear to me that I should allow the response to be accepted out of time. That is clearly within the overriding objective, is of no prejudice to the claimant and means we can now proceed with important case management considerations to progress the determination of the claims.

Employment Judge Isabel Manley

Date: 12 November 2024

Judgment sent to the parties on

20/11/2024

N Gotecha
For the Tribunal office

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>