

Appeal No. UKEATPA/0724/09/DM

EMPLOYMENT APPEAL TRIBUNAL
58 VICTORIA EMBANKMENT, LONDON EC4Y 0DS



At the Tribunal
On 6 November 2009

Before

HIS HONOUR JUDGE PETER CLARK
(SITTING ALONE)

NATIONWIDE LEISURE LTD

APPELLANT

MRS P PARNHAM

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEAL FROM REGISTRAR'S ORDER

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APPEARANCES

For the Appellant

MISS C WIDDETT
(of Counsel)
Instructed by:
Messrs Wake Smith & Tofields Solicitors
68 Clarkehouse Road
Sheffield S10 2LJ

For the Respondent

No appearance or representation by or on
behalf of the Appellant

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SUMMARY

PRACTICE AND PROCEDURE

Time for appealing

Appellant lodged Form EAT 1 in time, accompanied by all necessary documents but omitting page 8 of Form ET1. That was not served on the Appellant employer by the Employment Tribunal originally and never picked up until noticed by a member of the EAT staff.

In those circumstances exceptional case for time to be extended.

Appeal against Registrar's Order upheld.

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HIS HONOUR JUDGE PETER CLARK

Introduction

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1. The parties to these proceedings before the Sheffield Employment Tribunal were Mrs Parnham, the Claimant, and Nationwide Leisure Ltd, the Respondent. I shall so describe them.

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2. I have before me for hearing an appeal by the Respondent against the Order of the Registrar dated 22 July 2009, refusing an extension of time to the Respondent for appealing against the judgment of a Tribunal chaired by Employment Judge Morgan, written Reasons for which were promulgated on 30 April 2009. The 42-day time limit for appealing ran from that date and expired at 4.00pm on 11 June.

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Background

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3. The Respondent operates a golf club at which the Claimant was employed. By her Form ET1 presented to the Tribunal on 23 June 2008, Mrs Parnham made various complaints against the Respondent. The claims were resisted. A hearing took place before the Morgan Tribunal on 19 and 20 February 2009. The Claimant appeared in person; the Respondent was represented by Mr Ardron, the Honorary Chairman of the golf club and a retired lay member of Employment Tribunals.

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4. By their judgment dated 17 March the Tribunal upheld her complaints of unfair dismissal, wrongful dismissal and sex discrimination. They awarded her compensation totalling £36,660.00 including a 50 per cent uplift under section 31 of the **Employment Act 2002**. They also made recommendations under section 65 of the **Sex Discrimination Act 1975**.

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A 5. I take up the story of what followed from the witness statement of Mr Poulter of Wake Smith & Tofields, Solicitors, of Sheffield, dated 28 October 2009 and lodged in these proceedings. I accept his account as true and accurate.

B 6. The result of the case having been announced at the end of the Tribunal hearing, the Respondent was, Mr Poulter tells me, distressed by the Tribunal's award. They promptly contacted Mr Poulter's firm on 3 March 2009, asking him to advise them on the prospects of an appeal. Mr Poulter was provided with a copy of the bundle of documents used before the C Employment Tribunal. He wished to seek the guidance of Counsel. He contacted chambers in Leeds and was advised that Written Reasons for the Tribunal's judgment should be obtained D and that the 42-day time limit would run from the date when those Reasons were sent by the Tribunal.

E 7. He applied for the Reasons on 26 March within the 14-day time limit from the date of the judgment, as required by Rule 30 of the Employment Tribunal Rules. The Reasons dated F 30 April were received by Mr Poulter the following day. A copy of the Reasons was sent to the Respondent on 5 May and Miss Widdett was instructed to advise on the prospects of success in an appeal, on 20 May. In his instructions to Counsel Mr Poulter correctly identified the last day G for service of the Notice of Appeal as 11 June. He also learned that the cut-off time on that day was 4.00pm. The completed draft Notice of Appeal settled by Miss Widdett was received by Mr Poulter by email at 16.14 hours on 10 June. He forwarded the draft to his clients at 16.29 H asking for their comments. These were received and forwarded to Counsel at 11.52am on 11 June. Having spoken to Counsel on the telephone, Mr Poulter forwarded the Notice of Appeal and required accompanying documents to the EAT by email at 13.01 hours on 11 June.

A 8. Unhappily, what no one in the Respondent's team had noticed was that the Form ET1
B copied from the Respondent's bundle before the Employment Tribunal was incomplete; page 8
C was missing. That omission was detected later that day by a member of the EAT staff. The
D documents having been acknowledged as received by Susan Maytum, who said that they had
E been referred to the team who deal with Notices of Appeal. At 16.59 hours, Yatish Patel, a
F member of that team, informed the solicitor that the appeal had not been properly instituted;
G page 8 of the Form ET1 was missing. Mr Poulter, realising that he had never had a copy of that
H page, contacted the Sheffield Employment Tribunal the following morning. A full copy of the
ET1 was faxed to him by the Employment Tribunal and he forwarded it on to the EAT. The
EAT was thus properly instituted one day out of time.

D 9. The Respondent applied for an extension of time for appealing. That was opposed by the
E Claimant. The Registrar considered the matter on paper and refused to extend time for the
F Reasons attached to her order of 22 July. Against that order this appeal is brought.

E 10. In advancing the appeal, Miss Widdett makes a number of points. First, that there was no
F intentional default by the Respondent's representative; I agree. The delay was short; it was
G 1 day. The appeal is meritorious; I regard the underlying merits as fairly neutral in this case,
H although I accept that the appeal is not hopeless, leading to the result suggested by
Sir Christopher Staughton in the case of Aziz v Bethnal Green City Challenge Co. Limited
[2000] IRLR 111. Finally, that an extension of time would not prejudice the Claimant.

G 11. It may be thought that it requires a heart of stone not to accede to those arguments in this
H appeal. However, time limits are strictly enforced, as Ward LJ observed at the beginning of his
judgment in Woods v Suffolk Mental Health Partnership NHS Trust [2007] EWCA
Civ 1180, paragraph 27:

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"The denizens of the EAT seem to me to be a hardhearted lot and mercy flows thinly in the lifeblood of the rules and practice which govern their consideration of applications to extend time for appeal."

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12. His Lordship went on to note that that approach was first set out in the judgment of Mummery P, in United Arab Emirates v Abdelghafar [1995] ICR 65. It was approved by the Court of Appeal in Aziz, and more recently, I would add, in Jurkowska v HMLAD Limited [2008] IRLR 430.

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13. Woods was a case in which the accompanying documentation was incomplete. The Registrar refused to extend time. I upheld that decision and the Court of Appeal declined to interfere. A similar position obtained in Chelminsky v Gdvnia America Shipping Lines (London Ltd) [2004] ICR 1524. That is not to say that these questions can be decided in some formulaic way. The principles must be consistently applied, but there will be exceptional cases on their facts, where time ought to be extended.

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14. Having heard Miss Widdett's oral submissions, one exceptional feature strikes me in particular in this case. It is, as I have rehearsed in the history of the matter and this has been confirmed to me by Miss Widdett on instructions from Mr Poulter, that the Respondent originally received a Form ET1 from the Employment Tribunal at the outset of these proceedings, which had page 8 missing. Hence, the bundle prepared for the purposes of the Employment Tribunal hearing omitted page 8. Mr Poulter was unaware that that page had been omitted when the Form ET1 was first served on the Respondent by the Employment Tribunal. That is not altogether surprising, since I accept Miss Widdett's submission that page 8 of the Form ET1 has absolutely no bearing on any issues arising in this case. It merely gives the name of the Claimant's representative and deals with the question of whether or not reasonable

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A adjustments should be made for her in the progress of her claim through the system, and it is signed and dated by her.

B 15. I have been reminded of the EAT rules dealing with the institution of appeals and, in particular, I have been taken to Form ET1 in the schedule to the 1993 rules, as amended. Paragraph 5 of the standard form ET1 provides at letter (b):

C "The claim (ET1) should be copied and attached to the notice."

D 16. Reverting to the Employment Tribunal rules of procedure:

D "A claim is instituted under rule 1 by the Claimant, presented to an employment tribunal office, the details of the claim in writing."

E 17. That is in the approved Form ET1. Then at rule 2, what the tribunal does after receiving the claim, at sub-rule (2) it is provided:

E "If the secretary accepts the claim or part of it, he shall (a) send a copy of the claim to each Respondent and record in writing the date on which it was sent."

F 18. The unusual feature of this claim is that the Appellant before me, the Respondent below, has lodged with the Form ET1 a complete copy of the claim which was sent to the Respondent by the Employment Tribunal. This is not a case such as in Woods where only part of the Form ET1 was copied and lodged, or in the case of Chelminsky where the entire Reasons of the tribunal were omitted from the pack that was lodged.

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H 19. Although strictly and technically it may well be that the appeal was not properly instituted because there was not a complete form ET1, in the special circumstances of this case and taking into account the other factors which are urged on me by Miss Widdett, it seems to

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me that it would be right to extend time, simply because the Respondent lodged the whole of the claim that was served on him by the Employment Tribunal with the other documents and the Notice of Appeal within time.

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20. In these circumstances, at the risk of appearing soft-hearted, I shall allow this appeal. Time will be extended by one day to allow it to be in time, and the case will now proceed to the paper sift stage, to determine on what track the appeal should proceed.

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