

EMPLOYMENT TRIBUNAL

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Case N° 8 of 2018

BETWEEN:

JOANNE MARY FAIRHURST

COMPLAINANT

-and-

GRAND CARE HOME LIMITED

RESPONDENT

BEFORE JOSEPH NUÑEZ, Chairman.

Dated this 20th day of June 2018.

DECISION

On the 6th November 2017, the Complainant gave a one months written notice of resignation from her employment with the Respondent citing “a loss of trust and confidence within the company or the higher management” and that as she was suffering with anxiety she did not believe it “healthy for me to continue working under what I feel is such a toxic environment”. The Complainant therefore terminated her employment on the 5th December 2017. On the 5th March 2018, the secretary to the Employment Tribunal received a Claim Form from the Complainant dated that same day. In the Claim Form itself the Claimant states that she is claiming for “unfair dismissal”, “arrear of pay”, “other payments”, “bullying”, “breach of employment contract”, “equal opportunities claim” and “sex discrimination”. Attached to this form is a thirteen page annex in which she states that her claims are:-

- (1) unfair dismissal due to constructive dismissal;
- (2) breach of data protection legislation in that her personal employment and medical information was circulated in an e-mail chain;
- (3) breach of equal opportunities legislation in that she was employed in a similar capacity to male managers on a less favourable contract;
- (4) breach of bullying and harassment legislation in that the Respondent did not have a bullying at work policy and did not deal with her allegation of bullying; and

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- (5) unlawful deduction of wages in that she received statutory sick pay instead of her basic wages whilst on sick leave and her on call allowance was reduced without her consent.

The Complainant therefore filed her claim on the very last day permitted.

On the 6th or 7th March 2018, the Respondent was served with a copy of the Claim Form attached to a letter in which the secretary to the tribunal explained the procedure which the Respondent needed to pursue; the latter date being more likely if the contents of an e-mail dated the 3rd April 2018, sent by the secretary of the Tribunal to the Respondent are to be believed. In either case, pursuant to the provisions of Rule 15(i) of the Employment Tribunal (Constitution and Procedure) Rules 2016 (hereinafter referred to as "the Rules"), which provide as follows:-

"15.(1) The response to a claim, if any, shall be on a prescribed form and presented to the Tribunal within 21 days of the date that the copy of the claim form was sent by the Tribunal",

the response to the claim had to be filed by the Respondent by no later than the 27/28th March 2018. No response was received by the secretary to the Tribunal on either of those said dates.

On the 3rd April 2018, the Complainant and her sister contacted the secretary to the Tribunal by phone and e-mail pointing out that they had not received a response from the Respondent and enquiring as to what steps would now be followed. It would appear that as a result of this, the secretary to the Tribunal telephoned Mr Troy Charvetto, the operations director of the Respondent, to point out that no response to the claim had been received by the Tribunal. It would further appear that Mr Chavertto alleged that a response had already been submitted to the Tribunal but as can be seen from e-mails exchanged the secretary to the Tribunal denied that any document had been received from the Respondent at the Tribunal's offices. In the end, the response was received by the Tribunal on the 9th April 2018; the response is not dated. The response was therefore presented to the Tribunal, at best 9 working days, and at worst, 10 working days after the expiry of the 21 day deadline prescribed by Rule 15(i) of the Rules. In these circumstances, Rule 17 of the Rules provides that:-

"17.(1) A response shall be rejected by the Tribunal if it is received outside the time limit in rule 15(1) (or any extension of that limit granted within the original limit) unless an application for extension has already been made under rule 20 or the response includes or is accompanied by such an application (in which case the response shall not be rejected pending the outcome of the application).

(2) A rejected response form shall be returned to the respondent together with a notice of rejection explaining that the response has been presented late. The notice shall explain how the respondent can apply for an extension of time and how to apply for a reconsideration of the rejection".

In consequence of this provision, on the 27th April 2018, the secretary to the Tribunal informed the Respondent in writing that the Tribunal had rejected

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the response filed as it had been received outside of the 21 day period prescribed by the Rules and as no application for an extension of time had been applied for by the Respondent. The Respondent was further notified of its right to apply to the Tribunal for an extension of time in which to file the response. To date no reply to this letter has been received and the Respondent has not filed any further document or made any application for an extension of time.

By letter dated the 24th May 2018, Litigaid Law acting for the Complainant for the first time in the case, requested the tribunal to issue judgment in favour of the Complainant pursuant to the provisions of Rule 21 of the Rules which provide as follows:-

- "21. (1) *Where on the expiry of the time limit in rule 15(1) no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, subrules (2) and (3) shall apply.*
- (2) *A Chairperson shall decide whether on the available material (which may include further information which the parties are required by a Chairperson to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Chairperson shall issue a judgement accordingly. Otherwise, a hearing shall be fixed.*
- (3) *The Respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Chairperson".*

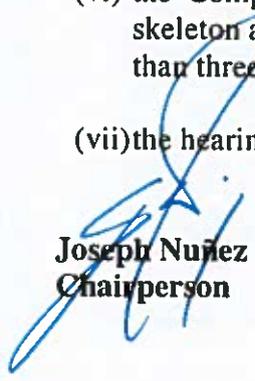
At this point in time, the position that exists is that the response filed by the Respondent has been rejected and "no application for a reconsideration is outstanding". But it is pertinent to bear in mind that neither Rule 17 or Rule 21 refers to a specific time frame by which an application for an extension of time in which to file a response must be made by the Respondent, once the tribunal has rejected a response, before the provisions of Rule 21(2) kick in. Similarly, Rule 20, which deals with applications for extensions of time, likewise fails to refer to a specific time period in which the application has to be made. It would seem to me that the intention of the legislature was to leave it open to the Respondent to be able to apply for an extension of time at any time up to and including the point immediately before a chairperson issues his judgment. Such a situation would at first instance appear to fly in the face of reason and proportionality and be unfair on the Complainant but it seems to me that a Tribunal would in such circumstances rarely grant any extension sought unless there were exceptional circumstances. Each case would depend on their own facts. On the other hand, it appears to me that it would be unfair and unreasonable on the Respondent if a chairperson could issue his judgment without giving the Respondent sufficient time in which to react to the notice issued by the Tribunal pursuant to Rule 17. So what should the time frame be?

The Complainant's solicitors have submitted that the period in which an application for an extension should be submitted once the Rule 17(2) letter

has been issued should be twenty-one days. They have referred the Tribunal to Rules 14 and 19 of the Rules, both of which provide for a twenty-one day period for the making of applications. There are other rules within the Rules which also refer to twenty-one days in which to take particular action, namely Rules 24, 37(2), 53(4), 56. Taking everything into account, and bearing in mind the overriding objective provided for in Rule 3, I am of the opinion, and have so decided, that a Respondent has twenty-one days as from the date on which it receives the notice issued by the secretary pursuant to Rule 17(2) to file an application for an extension of time in which to file its response and that it is only thereafter that a Tribunal can proceed pursuant to the provisions of Rule 21. This being so, and the Respondent in this case having failed to apply for an extension of time to date and the twenty-one day period having elapsed, I now therefore turn to consider whether pursuant to Rule 21(2) of the Rules I can, on the material available to me, make a determination on all or any part of the claim(s) made by the Complainant.

I have considered the Claim Form and the 13 page annex to it and come to the conclusion that on the material available in said documentation I cannot properly make determinations with regard to the various claims contained therein either with regard to jurisdiction and/or the substance of the various claims. In these circumstances I have decide, and so order, that:-

- (i) the secretary to the Tribunal set down a hearing date for the determination of the claims filed by the Complainant;
- (ii) notice of the hearing date be given to the parties hereto;
- (iii) the Respondent to be allowed to address the Tribunal on the hearing date set only to the extent and with regard to the preliminary issue of whether the Tribunal has jurisdiction to hear and determine any one or more of the claims filed by the Complainant as contained in the Claim Form and annex;
- (iv) the Complainant to file with the Tribunal any witness statements she may wish to produce by no later than three days before the date set for the hearing;
- (v) the Respondent to serve on the Complainant and the Tribunal any skeleton arguments and bundle of authorities on the issue of jurisdiction it may wish by no later than three days before the date set for the hearing;
- (vi) the Complainant to serve on the Respondent and the Tribunal any skeleton arguments and bundle of authorities she may wish by no later than three days before the date set for the hearing; and
- (vii) the hearing be listed for three days.


Joseph Nuñez
Chairperson