



EMPLOYMENT TRIBUNALS

Claimant

Respondent

The Firehouse Bradford Ltd

v

**Commissioners for HM Revenue &
Customs**

PUBLIC PRELIMINARY HEARING

Heard: By Skype for Business **On: 6 April 2020**

Before: Employment Judge JM Wade

Representation:

Claimant: Mr Ali, director

Respondent: Ms C Knowles, of Counsel

JUDGMENT

My decision granting an extension of time for the presentation of the claimant's appeal against the respondent's Notice of Underpayment of National Minimum Wage and Penalty is revoked. The appeal was presented outside the relevant time limit and must be dismissed.

REASONS

1. This has been a remote hearing to which the parties did not voice any objections and I explained the way in which this was enabled to be a public hearing. The form of remote hearing was Skype for Business. A face to face hearing was not held because of the present Covid 19 circumstances.
2. Judgment was delivered on an extempore basis but I provide these written reasons now in order to assist the parties (it is not currently clear how transcription of judgments delivered at such hearings is to operate in this Tribunal).
3. The documents before me were the claimant's appeal notice; my direction extending time; the respondent's response; Ms Knowles' skeleton argument and attached law.
4. I did not swear in the claimant, Mr Ali, because Ms Knowles primary submission was that I had fallen into error and granted an impermissible extension of time on a previous occasion. In effect she asked me, on behalf of HMRC to vary that

decision, revoke it, and the consequence of that decision would be that the appeal must be dismissed.

5. Mr Ali was able to confirm he was the director of the respondent appellant, and he provided further information and background in support of the extenuating circumstances which resulted in the appeal form being presented late. He relied upon the Tribunal's rules of procedure, in particular Rule 5, which he had available to him on screen and cited to me: "*The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.*"
6. Mr Ali also referred me to Smith v Berrymans Lace Mawer service Company v another [2019] EWHC 1904, which he told me concerned a personal injury case where a defence was filed late, but none the less was accepted.
7. Ms Knowles skeleton set out the that the relevant time limit was to be found in Section 19C of the National Minimum Wage Act 1998; and she submitted, supported by relevant commentary that: *Rule 5 only applies to time limits specified in the tribunal rules themselves and has no relevance to statutory time limits. (That view is supported by Mucelli v Government of Albania [2009] UKHL 2, [2009] 3 All ER 1035 where it was held that a similar provision in the CPR could not be invoked to extend an absolute time limit for filing an appeal under the Extradition Act 2003.)*"
8. Accepting the law was against him, Mr Ali properly focussed on the chain of events, which is as follows and was set out in the response:

9 January 2020 NOU pursuant to S.19 NWA 1998 served,¹ accompanied by Schedule of arrears and guidance factsheet (which does not suggest that the time limit can be varied by the Employment Tribunal).

20 January 2020 Mr Ali emails Ms Shuttleworth at HMRC: "*Hi Jayne. I'm still waiting on the details for appealing the fine that I have been given.*"²

24 January 2020 Mr Ali sends a further email³.

28 January 2020 Ms Shuttleworth responds to Mr Ali by email, sending a further copy of the factsheet and copying the relevant paragraph of guidance into the body of the email⁴.

5 February 2020 Final date for payment and appealing against notice of underpayment.

7 February 2020 R receives an appeal form from A. Mr Jonathan Evans emails Mr Ali saying that he has today received a copy of Mr Ali's appeal but

¹ Hand delivered and emailed – see email of Jayne Shuttleworth 9.1.2020. See also paragraphs 12 and 13 and 39 of the Response.

² See paragraph 39 of the Response.

³ As above.

⁴ As above.

pointing out that he needs to file it with the employment tribunal, and referring to the relevant guidance.

11 February 2020

A presents appeal⁵.

9. Mr Ali was accepted that he had received an email notifying him of the notice, but he was unclear as to the precise date. This arose in the extenuating circumstances set out in his appeal notice: being out of the country from October and leaving his business in other hands to be wound down, dealing with caring for relatives, bereavement, and on his return in early January, also, further bereavement.
10. I have expressed to Mr Ali that if any circumstances would generate more time to present an appeal, those that he described were such, reflected in my original decision.
11. The difficulty for Mr Ali was that his position was advanced as if he had personal liability, and the notice needed to be served on him personally, that is, received by him. That is good law in relation to a notice of dismissal to an employee, which must be received, but not in these circumstances. He trades through a limited company, which has a registered office, and all are entitled to rely on that registered office being kept up to date on the public register. Service there is good service and the email is a precautionary measure.
12. In all these circumstances I accept the submission that I fell into error in the original extension of time, and that the decision must be varied in the interests of justice and revoked. That being the case, I must dismiss the appeal: it has not been presented within the relevant time limit and the Tribunal cannot determine it.

Employment Judge JM Wade

7 April 2020

⁵ Note that Mr Ali appears to have dated the Appeal form 20 January 2020.