



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs T. Kandeepan

**Respondent:** (1) Mr A. Rashied, trading as Rush Forecourt Services

**London Central**

**On: 3 July 2017**

**Employment Judge Goodman**

## JUDGMENT

- 1 The response of the first respondent is struck out under rule 37(1)(c) for failing to comply with orders to send documents and witness statements to the claimant.
- 2 The judgment sent to the parties on 24 November 2016 is reinstated. The first respondent is ordered to pay the claimant £6,006.65 compensation for unfair dismissal and unpaid maternity pay and £250 remission of fees paid.
- 3 Proceedings against the second respondent are dismissed.

## REASONS

1. This is a claim for unfair dismissal and unpaid maternity pay after the claimant was not permitted to return to work after maternity leave.
2. Judgment was entered in her favour following a hearing on 22 November which the first respondent did not attend. He later attended a hearing at which the parties on 14 March 2017 when the judgment was revoked. In essence, the first respondent claimed there had been a transfer of the undertaking to Parkways Management Consultants Ltd, though he continued to work there as manager. The claim was then listed for a two day hearing on 28 and 29 July 2017 and the case management timetable was reset. The alleged transferee was added as second respondent and served with proceedings.
3. The claimant later complained that the first respondent had not complied with the order to serve documents by 12 May 2017 and exchange witness statements by 2 June 2017. The Tribunal wrote to the

first respondent on 12 June stating it was considering striking out his response because he had not complied with these orders. He replied on 19 June that (1) he could not type because his tremor had got worse but a colleague was typing the email for him and (2) he had attempted to deliver the documents by courier but a truck was in front of the front door and there was a menacing dog. To this the claimant's solicitor says their premises are easy of access, with more than 100 businesses on 10 floors, and no one else has trouble receiving deliveries.

4. The first respondent has now had much notice of the need to deliver documents and a witness statement. He has not mentioned any problem until asked about it. He has not emailed a witness statement. I have expressed in paragraph 8 of the reasons sent 13 March 2013 why I do not believe the hand tremor is a substantial impediment. There is no delivery note from the unidentified courier. If it is right that the courier was deterred by a dog on the first attempt, he could have tried again.
5. What if the second respondent, which has not answered to the claim? I comment that there is no evidence other than the word of the first respondent that there was any transfer of the business to the second respondent. The only document he has provided is suspicious – see paragraph 7, reasons 13 March 2017 – and likely to have been fabricated by the first respondent. The first respondent agreed at the last hearing that he is still running Rush Forecourt Services, indicating that the second respondent was now his employer. It is hard therefore to believe that the second respondent would not have replied to the Tribunal if there had been any business transaction – they would have wanted at least to dispute there was a transfer. If there were documents about the transfer to the second respondent, it would be in the first respondent's interest to disclose them.
6. There is still no evidence the first respondent has complied with either order in the two weeks since he replied to the Tribunal.
7. I conclude that the first respondent is attempting to avoid responsibility for the claimant's claim, rather than engage with the issues. In the interests of justice the judgment entered in default after the first hearing, and revoked at the second hearing, is reinstated.
8. The hearing listed for 26 and 27 July is cancelled.

Employment Judge Goodman  
4 July 2017