EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mrs J Fox Thorley **v** **Evans and Lewis Limited**

Heard at: Birmingham **On**: 28 September 2017

Before: Employment Judge Broughton

Appearances:
For Claimant: in person
For Respondent: Mr M Cameron, consultant

RECONSIDERATION JUDGMENT

The respondent's application for a reconsideration of the default judgment issued on 30 May 2017 is refused save that the judgment is varied to remove the award for costs.

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Employment Judge Broughton

Date: 29 September 2017

Sent to the parties on: 02 October 2017

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For the Tribunal Office

Reasons

1. The claimant was dismissed by the respondent by letter dated 6 January 2017. It was common ground that she was dismissed without notice or pay in lieu of notice.

2. Her claim for notice pay was received by the tribunal on 20 March 2017. That claim was served on the respondent on 28 March 2017. The

correspondence included details of how to respond and confirmed that a response was required by 25 April 2017. It also included notice of a hearing listed for 31 May 2017.

3. No response was sent or received. On 24 April 2017 the respondent emailed requesting a postponement of the hearing. On 25 April 2017 the claimant objected to the requested postponement.

4. On 9 May 2017 the postponement request was refused by EJ Woffenden on the grounds that there were inadequate reasons offered and the claimant objected.

5. Also on 9 May 2017 correspondence was sent to the claimant, copied to the respondent, stating that no response had been received and that further information was needed to be able to issue a default judgment. The respondent claimed not to have received this.

6. On 11 May 2017 the respondent repeated their request for a postponement. On 12 May 2017 EJ Dean refused that request for the reasons already given and confirmed that a default judgment would now be issued. The respondent claimed that was also not received.

7. On 13 May 2017 the claimant sent in the quantification of her claim as requested.

8. On 26 May 2017 the respondent's representatives came on the record. They apparently telephoned the tribunal office. The representatives emailed to ask for no judgment to be issued and suggested that an application to submit an ET3 late was being prepared.

9. The default judgment was issued by REJ Findlay on 30 May 2017.

10. Also on 30 May 2017 the respondent's representatives submitted an application for an extension of time to present their response. The grounds for the application were essentially that the respondent had failed to file a response in error. The application included part of an ET3 but not all of the prescribed information.

11. On 13 June 2017 the respondent requested a reconsideration of the default judgment.

12. On 6 July 2017 the respondent was asked to file a fully completed ET3.

13. The respondent filed a completed ET3. They contended that the claimant was summarily dismissed for gross misconduct and, specifically, for being absent without authorisation and failing to properly follow the respondent's sickness absence process.

14. On 17 July 2017 notice of a reconsideration hearing was sent to the parties. That notice suggested that if the respondent was successful the hearing

of the case would follow immediately. That said, it also suggested that only the respondent needed to attend.

15. As a result an amended notice of hearing was sent on 1 August 2017 confirming that both parties should attend and reiterating that, if the respondent were successful, the hearing of the case would follow immediately. The respondent claimed not to have received that also.

16. The respondent attended unable to proceed to a hearing of the case if their application were successful.

The law

17. I have considered rule 70 Employment Tribunals Rules of Procedure 2013 and, specifically, whether it is "necessary in the interests of justice" to revoke the default judgment issued on 30 May 2017.

Decision

18. The respondent claimed that they had failed to submit a response in time due to an error on their part. They said that they erroneously believed that their application to postpone the hearing would suffice.

19. The respondent is an insurance business and the correspondence from the tribunal was clear about what was required. They tried on two separate occasions to secure a postponement of the original hearing without providing any evidence of any good reason for doing so.

20. The claimant considered that the respondent was, effectively, playing for time and unduly prolonging proceedings.

21. The respondent and, latterly, their representative claimed that three important items of tribunal correspondence had not been received. That seems to me unlikely given that other items were received and all were received by the claimant.

22. It seems to me that the respondent's reasons for their failings were inadequate. Nonetheless I still have to consider the interests of justice and there is clearly prejudice to the respondent if they are not allowed to fully defend the proceedings. I have, however, also considered the importance of respect for tribunal rules and procedures and for finality of litigation. The default judgment was entered correctly.

23. There has already been disadvantage to the claimant in that she was, apparently, required to take time off work for the original hearing and she had to attend today. If the case were allowed to proceed she would have to attend again and her costs and expenses of doing so are not recoverable.

24. It was not acceptable that the respondent attended this hearing unable to proceed. The notice of hearing that they acknowledged they had received made

clear that this was expected and, notwithstanding the somewhat contradictory error in the original notice, they were on notice of this requirement and should, at least, have clarified the position. That is, if they did not, as claimed, receive the amended notice of hearing which was emailed to the same address as other correspondence.

25. This is a case of relatively low value. The default judgment awarded the claimant £1284 net for unpaid notice pay.

26. Perhaps most tellingly, I have considered the merits of the respondent's response to the claim.

27. The claimant alleged that she was dismissed summarily whilst on sick leave. I was shown the letter of dismissal which referenced the reason for her dismissal being her attendance.

28. The completed ET3, finally received on 13 July 2017, some 2.5 months late, suggested that the claimant was summarily dismissed for being absent without authorisation and/or for failing to properly follow the respondent's sickness absence procedures.

29. It was common ground that the claimant had notified the respondent that she was off sick. The issue was, seemingly, whether she was required to notify them every day.

30. It seemed to me that the respondent's defence had little or no prospect of success. Whilst further reasons were alluded to before me, they would have little or no credibility given the previous reasons advanced.

31. The respondent confirmed that there was no policy that would suggest that anything done by the claimant could be characterised as gross misconduct. On general principles it seemed to me that attendance and/or issues relating to absence reporting would not amount to gross misconduct. As a result the respondent was likely to lose had matters been allowed to progress to a full hearing.

32. Accordingly it would not be in the interests of proportionality to incur the time and costs for all parties of a further hearing that would almost certainly have the same result.

33. For all the above reasons, it is not, in my judgment, in the interests of justice to revoke the default judgment in this case.

34. That said, given the recent decision of the Supreme Court in relation to tribunal fees and the fact that the claimant will receive reimbursement for any fees paid, it does appear to me to be in the interests of justice to vary the original judgment to remove the reference to the respondent being liable for such fees.