Case Number 2500557/17

EMPLOYMENT TRIBUNALS

Claimant Mr M Hussain

Respondent Modex Security Services Ltd

JUDGMENT OF THE EMPLOYMENT TRIBUNAL WITHOUT A HEARING

MADE AT NORTH SHIELDS ON 8th September 2017
EMPLOYMENT JUDGE GARNON

JUDGMENT

Under Rules 70-72 of the Employment Tribunal Rules of Procedure 2013, (the Rules), I refuse the application for reconsideration of the Judgment of Employment Judge Hargrove dated 14th July 2017 because there is no reasonable prospect of it being varied or revoked.

REASONS

1. The respondent has applied for a reconsideration of a judgment on liability and remedy made under Rule 21 in circumstances where no response had been presented. The judgment was that a claim of unlawful deduction of wages was well founded; the respondent was to repay £ 3099.00 and the claimant's fees of £390. Since the Supreme Court has ruled the Fees Order was unlawful, the claimant will be refunded the £390 so the respondent need not repay it. My decision is on the other element of the judgment.

2. The claim was presented on 10th May 2017 and served on 25th May by post to an address which is the respondent's registered office and shown as its place of business on documents the claimant has forwarded to the Tribunal. As required by law the claimant had before presenting engaged in Early Conciliation via ACAS using the same address. A response was due by 22nd June. None was received.

3. Employment Judge Johnson decided more information was needed from the claimant before a determination on liability and remedy could be made. On 23rd June a letter requesting that was sent to the claimant and copied to the respondent. On 4th July a reminder letter was sent to the claimant, also copied to the respondent. There was some correspondence with the claimant into which the respondent did not need to be copied but on 11th July a letter was sent to him into which the respondent was again copied. On that day by e-mail, the claimant provided the information which had been requested. One of the documents he provided was a latter to the respondent dated 13th February 2017 in which he meticulously set out the hours he had worked and the amount he had not been paid

4. On the available material as to both liability and remedy, because he had sufficient information to enable him to find the claim proved on a balance of probability and to

determine the sums claimed, Employment Judge Hargrove was then obliged to issue a judgment. It was sent to both parties on 18th July 2017

5. The judgment would have been received by the respondent in the normal course of post by 20th July 2014. The first contact from it was a letter dated 31st July received electronically on 3rd August. It said (bold is my emphasis) "*Due to this **being the first we have been notified of such claim**, I would like to ask for a reconsideration if possible* "

6. There was no draft response but the letter said the claim was for more than was owed. It acknowledged £1360.80 was due as agreed with the claimant in April. None of it had been paid. On 8th August by e-mail the Tribunal told the respondent a response form would have to be submitted together with an application for it to be accepted out of time and an explanation as to why it was not submitted by the due date. Not until 1st September did the Tribunal receive the response form with neither the application nor the explanation.

7. Employment Judge Hargrove having retired I have considered this application on a preliminary basis under rule 72(1.The respondent has one argument only being that shown in bold above. Between service of the claim and judgment three letters were sent by the Tribunal to the same address. No documents were ever returned as undelivered in the postal system. It is fanciful to suggest none arrived in the normal course of post. Additionally, there was contact from the claimant himself and ACAS before the claim was even issued. The evidence points strongly to the claim being well known to the respondent and simply ignored.

8. Under the Rules, the only ground for a reconsideration is whether one is necessary in the interests of justice. That means justice to both sides The prejudice to the claimant of a reconsideration would be that he has been owed money since February and although it is said by the respondent the sums owed are less than those awarded for various reasons (none of which the claimant accepts) , a reconsideration would mean further delay and expense. The respondent had the chance to advance its arguments to the Tribunal and via ACAS. It **chose** to do neither. In the Rules, and those of 2004, Parliament clearly intended to have a modernised system to do justice between the parties but required respondents to put forward their arguments in a prescribed way at a prescribed time. The system also made far greater provision for determinations without a hearing. The Tribunals send to every respondent detailed explanations of what they must do, when they must do it and the consequences of not complying.

9. Everyone is still entitled to a hearing if they follow the rules to avail themselves of that right .While I am not convinced the judgment is for any greater sum than would have been awarded had a Tribunal heard the respondent's proposed defence fully, if it is, the respondent has only itself to blame. It ignored the claim; a procedure followed which resulted in a judgment. To allow a respondent, who has not taken advantage of the opportunity to defend, to do so after a Rule 21 judgment would make a mockery of the system.

EMPLOYMENT JUDGE TM GARNON
SIGNED ON 8th SEPTEMBER 2017

SENT TO THE PARTIES ON
11 September 2017

P Trewick
FOR THE TRIBUNAL OFFICE