

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100285/2017

Held in Glasgow on 9 August 2017

Employment Judge: Frances Eccles

Mr K Bain

Claimant

Crown Hotel (Stornoway) Limited

Respondents

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is (i) to reconsider the Judgment dated 28 April 2017; (ii) on reconsideration to revoke the Judgment dated 28 April 2017 & (iii) to allow the respondents an extension of time for presenting a response.

REASONS

BACKGROUND

1. The claim was presented on 25 January 2017. The claimant complained of unauthorised deduction from wages, failure to pay holiday entitlement and breach of contract (notice pay). A copy of the claim was posted to the respondents by the Tribunal on 17 February 2017. The respondents were advised that if no response had been received by 17 March 2017 and no extension of time had been agreed by an Employment Judge, they would not be entitled to defend the claim. A Final Hearing was listed for 26 April 2017. Parties were notified of the Hearing date.

2. On 15 March 2017, the respondents' General Manager, Mr Tom Strathmore contacted the Tribunal by e-mail. In his e mail Mr Strathmore stated: -

5 *"Hi there, I have been informed a case has been raised (4100285/2017) and should have by now received further correspondence to confirm this.*

As yet I have received no additional information and have now been informed a response is expected by myself by the 17th of the month.

10 *As advised by your office, is it all possible to request this information be re-sent (to the address below, if that differs from a previous address used) and an extension be applied to the response date for this.*

Please accept my apologies for this disruption."

3. The Tribunal requested that the respondents copy their correspondence to the claimant as required by Rule 92 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("Rules of Procedure 2013"). The respondents sought legal advice from the Tribunal. The respondents were advised by letter of 29 March 2017 that the Tribunal was unable to provide advice to a party on the merits of their case or how to proceed in relation to it. The respondents were further advised by letter of 29 March 2017 that the deadline for presenting a response had passed; their extension request had not been granted because they did not confirm that they had copied it to the claimant and that if they wished to defend the claim they must take action.

4. No response was received or accepted by the Tribunal. An Employment Judge decided to issue a Judgment on the available material under Rule 21 of the Rules of Procedure 2013. A Judgment was issued on 20 April 2017 ("the Judgment") in the following terms: -

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1. *The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of £541 (Five Hundred and Forty-One Pounds);*
- 5 2. *The claimant was dismissed in breach of contract in respect of notice and the respondent is ordered to pay damages to the claimant in the sum of £541 (Five Hundred and Forty-One Pounds)*
- 10 3. *The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of £1,082 (One Thousand and Eighty-Two Pounds).*
- 15 4. *The respondent shall pay the claimant his Tribunal fee of £160 (one Hundred and Sixty Pounds).*

The Hearing listed for 26 April 2017 was cancelled by the Tribunal.

5. The respondents were sent a copy of the Judgment on 20 April 2017 and advised of the right to apply for reconsideration. The respondents were also advised that they would have to apply for an extension of time to submit their response.
- 20 6. Mr Strathmore contacted the Tribunal by e-mail dated 26 April 2017 confirming that he had *"yet to receive any further information regarding this case"*. Mr Strathmore questioned whether it was possible that the respondents had missed some information. The respondents were sent a copy of the Judgment on 5 May 2017. Mr Strathmore contacted the Tribunal on 6 May 2017 enquiring *"why is this the first correspondence I have received and why have I had to request this?"*
- 25 7. By e mail of 12 May 2017, Mr Strathmore informed the Tribunal; *"This needs to be re-held with enough time and notice for me to respond properly. Previous correspondence has not been received"*. The respondents' correspondence of 12 May 2017 was treated as an
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application for reconsideration and extension of time to respond. It was not refused on initial consideration by the Employment Judge. Both parties were invited to express a view as to whether the application could be determined without a Hearing. The claimant was informed that he should provide any response to the application by 12 July 2017. Both parties were invited to express a view by 12 July 2017 as to whether the application could be determined without a Hearing.

8. No response was received from the claimant to the application and no views were expressed by either party as to whether the application could be determined without a Hearing.

9. In the above circumstances the Employment Judge decided that reconsideration of the Judgment should take place on the basis of parties making written representations rather than at a Hearing. Both parties were invited to provide any information which they wished the Tribunal to take into account when reconsidering the Judgment by 4 August 2017. The parties were informed that in the event of no further information being received the Tribunal would proceed to consider the Judgment on the basis of the information currently available.

10. On 3 August 2017, the respondents provided the Tribunal with additional information and their response to the claim in terms of which they deny that any further payments are due to the claimant after deductions in accordance with the terms and conditions of his contract of employment. The respondents allege that the claimant has failed to return a laptop provided to him for work purposes only. The respondents deny that the claimant was promised an additional week's pay.

DISCUSSION & DELIBERATIONS

11. In terms of Rule 70 of the Rules of Procedure 2013, the Tribunal may on the application of a party reconsider any Judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked. If it is revoked it may be taken again.

12. It is the respondents' position that they wish to defend the claim and have set out their grounds for resisting the claim in correspondence of 3 August 2017. I do not understand it to be in dispute that the respondents became aware of the claim shortly before expiry of the period for responding. They sought information from the Tribunal and due in part to their failure to comply with the Rules of Procedure regulating intimation of correspondence the time expired for entering a response. I recognise that there is no clear explanation provided by the respondents for their failure to contact the Tribunal again before the Judgment was issued on 20 April 2017 however they were in contact shortly after receipt of the Judgment explaining that they had still to receive information about the claim.
13. When considering whether it is in the interests of justice to reconsider the Judgment I had regard to the prejudice likely to be suffered by the parties if the application is granted or refused. The claimant has made no objections to the application for reconsideration. While I appreciate that the claimant is entitled to assume that the litigation is at an end and that he will wish to enforce the Judgment issued in his favour, I must balance this against the prejudice to the respondents of being denied the opportunity to resist the claim in circumstances in which they claim that no payments are due to the claimant and they have set out a potential counter claim. I am satisfied that delay on the part of the respondents to make their application was not material. The respondents have been consistent in their position that they have not received information from the Tribunal and I am not persuaded that there has been a deliberate failure to comply with the Rules of Procedure 2013 by the respondents. The claim was at an early stage in the proceedings when the Judgment was issued. I am satisfied that in all the circumstances it is in the interests of justice to reconsider the Judgment which shall be revoked.
14. Similar considerations apply to the application for an extension of time for presenting a response in terms of Rule 20 of the Rules of Procedure 2013. The claimant has made no objections to the application. The

respondents have provided a draft of the response which they wish to present which includes a potential counter claim. In all the circumstances, I am satisfied that the application for an extension of time for presenting a response should be granted.

5 **CONCLUSION**

15. Having considered all the information before me I have concluded that it is in the interests of justice to reconsider the Judgment which shall be revoked and to grant an extension of time to present a response. The ET1 will be copied to the respondents together with an ET3 to be completed by the respondents within 28 days of the date that the copy of the claim form was sent by the Tribunal.
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15 Employment Judge: Frances Eccles
Date of Judgment: 17 August 2017
Entered in register: 21 August 2017
and copied to parties