



EMPLOYMENT TRIBUNALS

Claimant: Miss K Paczkowska

Respondent: R-Com Consulting Limited

HELD AT: Manchester

ON: 11 December 2017

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: In person

Respondent: Not in attendance

JUDGMENT

It is the judgment of the Tribunal that the hearing of the claimant's application for reconsideration of the judgment of the Tribunal of 2 August 2017, and of the respondent's application for costs, be postponed to **9 January 2018 at 10.00 a.m.** One day has been allocated for the hearing..

REASONS

1. The Tribunal convened to hear the claimant's application for reconsideration of its judgment of 2 August 2017 whereby her claim was struck out pursuant to rule 47 by reason of her non attendance on the hearing date. The respondent intimated an application for costs arising therefrom, and the Tribunal has directed that that application also be dealt with in this hearing.

2. The claimant attended, and an interpreter had been arranged for her. In due course, however, the claimant confirmed that she did not need the services of the interpreter and, if anything, found it more confusing to try to concentrate on two languages being used and was confident that she could conduct the hearing in English. Consequently the interpreter was released.

3. Whilst the claimant attended, there was no attendance or representation on behalf of the respondent. This was the case at 10.00am, and by 10.15am, approximately, the Tribunal made enquiries of the respondent's representative as to why there may be no attendance on its behalf. Mr Warnes of Peninsula is the representative whom the Tribunal was expecting, and who appeared for the

respondent at the hearing in August 2017. Consequently the Tribunal contacted him and the respondent's representative's office, to enquire why it was that the respondent was not represented at the hearing. The information received in reply was to the effect that the respondent's representative was under the impression that the Tribunal had postponed this hearing. This was said to have occurred by telephone, and there was a suggestion that there was some written confirmation of this postponement. The Tribunal file, however, reveals no such postponement, and the Tribunal clearly did not postpone this hearing. The respondent's representative, however, is under the impression that it had done so. Quite how this came about was unclear, and doubtless the respondent will in due course provide the Tribunal with any written communication in which a postponement had been indicated, or, if this is not the case and there has been some confusion, any evidence in support of the contention that the respondent's representative made some error in relation to the listing of the reconsideration hearing.

4. The Tribunal considered whether the hearing could proceed if, for example, Mr Warnes could attend, say by 12 noon, so that at least the claimant's application for reconsideration could be heard. It transpired, however, that Mr Warnes was in the Birmingham area, and it seemed unlikely by that time that he would be able to attend the Tribunal, with the file which is presently in the representative's office, and to be able properly to represent the respondent on the reconsideration application. Mr Warnes did offer to participate in a preliminary hearing by telephone to discuss the matter, but given that he would not have the file or access to any communications received in the representative's office, it seemed rather pointless to conduct that preliminary hearing at this stage and the Tribunal therefore reconvened with the claimant to explain to her the position, and to invite her to make any application to the Tribunal as to how she wished the matter to proceed.

5. The claimant was understandably concerned that there may be a further postponement, pointing out that it had taken some four months from the original hearing to get this reconsideration hearing listed. Furthermore, the claimant stated that she wishes to make go back over 12 months now and she is most anxious not to have to keep on revisiting these matters. The Employment Judge did point out to her that she could apply for the Tribunal to proceed in the absence of the respondent, but that in those circumstances there was a high degree of probability that they too would seek a reconsideration, and that application would also have to be considered further with ensuing delay. The claimant, very pragmatically in the Tribunal's view and highly reasonably, concluded that it would be better to have this matter dealt with with both parties present, and, doubtless reluctantly, agreed that the matter should be postponed.

6. In terms of the length of the postponement, the Tribunal wishes this matter to be relisted as soon as possible, and to that end has obtained the relisted date set out above. Whilst the respondent was not asked for any dates to avoid, it will be appreciated that, given this is likely to be the responsibility of the respondent or its representatives, the proposed postponed date is one which the Tribunal is most keen to retain, and consequently any application to vacate this date, notwithstanding that it has not been given on the basis of any dates to avoid being provided by the respondent, will only be considered favourably in the most extreme of circumstances. It is unclear as to whether the respondents themselves would be required to attend the hearing and unclear as to whether or not Mr Warnes would have required any representative from his client to be present in this hearing. It

seems unlikely, however, that the respondents personally need to be present in the next hearing, and consequently if a representative on behalf of the respondent can attend the hearing on 9 January 2018, even if that is not the same representative, this is a date the Tribunal would wish to retain. Consequently the Tribunal will relist the hearing for 9 January 2018, and will only entertain an application made by the respondent to vacate that date in the most exceptional of circumstances.

7. In the interim the Employment Judge pointed out to the claimant that the circumstances may be such that she would be entitled to seek a preparation time order in relation to her attendance and preparation for the hearing today. Further, in relation to the respondent's costs application, whilst the claimant has made a witness statement in relation to the reconsideration application that she has made, she has not at present dealt with any financial position that may be relevant to the application for costs. The Employment Judge explained to her that it was entirely a matter for her as to whether she wished the Tribunal to take her financial position into account if an award of costs is made, but that if she did she should provide the respondent and the Tribunal with details of her means so that they can be taken into account in deciding whether, and if so in what sum, to make an award of costs.

8. Consequently, with apologies to the claimant for a situation that was not of her making, the Tribunal does postpone the reconsideration and costs hearing and they will be relisted as set out above.

POSTSCRIPT

9. Since dictating the above the Employment Judge has had sight of a further file in claim number 2423424/2017, in which the claimant brings claims against D4 Digital Limited. In that claim the claimant seeks to make further claims against what is an associated company of the respondent in these claims. The respondent in that claim has not yet had to serve a response (although one is in fact due today) and consequently no representative is presently on record for it. The Tribunal listed a preliminary hearing in that claim for 11 December 2017 at 10.00am, the intention being that the Tribunal would consider issues arising in this further claim in the light of the claimant's application for reconsideration of her previous claim. This is why the Tribunal took the exceptional step of listing a preliminary hearing on the day that the response was due, rather than after the response had been received.

10. By a letter sent to the Tribunal by email, on 15 November 2017 (it is unclear if this was copied to the respondent) the claimant sought a postponement of the preliminary hearing, stating as her reason that she had to attend the reconsideration hearing at the same time, and quoting the case reference number in these claims. She therefore applied for a postponement of the preliminary hearing. That application was considered by another Employment Judge, and not Employment Judge Holmes, who had given the original direction to list the preliminary hearing to be heard at the same time as the reconsideration hearing, and on that basis the Tribunal did order that the preliminary hearing fixed for 11 December 2017 should be postponed. The Tribunal did so in a letter dated 16 November 2017, in which reference was made solely to the new claim against D4 Digital Limited.

11. Consequently the Tribunal postponed the preliminary hearing in the new claim, but did not postpone the reconsideration hearing. To the extent that the letter of 16 November 2017 made reference to any hearing, it did so in the singular, and

not the plural, and was sent directly to the respondent (and not its representative in these proceedings) and was entitled solely in relation to the new claim. It appears that the respondent, acting in that claim in person, must have been in communication with the respondent's representative in the other claim and informed the representative of the postponement of the preliminary hearing in the new claim. That appears to have been taken by the respondent's representative as a postponement of both the reconsideration hearing and the preliminary hearing. That was clearly an error, and one which could have been avoided had the respondent's representative, had there been any ambiguity or doubt about the meaning in effect of the Tribunal's letter of 16 November 2017, made enquiries of the Tribunal as to whether the reconsideration hearing was also postponed, which it clearly was not. This, therefore, explains why the respondent's representative may have been under the mistaken impression that the reconsideration hearing had been postponed. Clearly it had not, and the Tribunal has been obliged to grant the postponement that has been given today. Any further consequences of this state of affairs will be considered further by the Tribunal at the next hearing.

12. For the avoidance of doubt, the Tribunal will also consider the new claim at the conclusion of the reconsideration hearing of the existing claim. To that extent the Tribunal proposes to combine the two claims, and the parties are invited to comment upon that combination within seven days of receipt of this judgment.

Employment Judge Holmes

Dated: 11 December 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

18 December 2017

FOR THE TRIBUNAL OFFICE