



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms A Croeser

**Respondent:** Omega Environmental Technologies (Europe) Limited

**Heard at: London South (Croydon)**

**On: 27 November 2017**

**Before: Employment Judge John Crosfill**

## Representation

Claimant: In person

Respondent: No appearance or representation

# JUDGMENT

1. The Respondent's application dated 13 April 2017 for reconsideration of the judgment sent to the parties on 23 March 2017 is refused.
2. The Respondent is ordered to pay the Claimant the sum of £111 by way of a preparation time order made under Rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

# REASONS

1. The matter had been listed for a hearing to consider the Respondent's application for a reconsideration of the judgment dated 23 March 2017 made by EJ Andrews. By reason of ill-health it was not reasonably practicable for her to hear the case so it was allocated to me.
2. At 10:00am there was no appearance by, or on behalf of, the Respondent. I instructed the clerk to call out the Respondent's name in both waiting rooms and to

check whether any person had signed in at the security desk at the front door. I further asked the clerk to ascertain whether the Claimant had any contact telephone numbers for the Respondent. She provided a number but it went to voicemail. Finally, I put the matter back for 25 minutes in case there were any travel delays.

3. I decided that in the absence of any attendance I would proceed in the absence of the Respondent. I had regard to the information contained in the application. I noted:
  - 3.1. That there was no adequate explanation of why the ET3 had not been lodged in time or at least before the judgment was issued which was some time later. There was nothing but a vague suggestion that on one occasion there had been a computer crash. No details were given of any steps to rectify matters.
  - 3.2. The thrust of the application was an assertion that the Claimant was self-employed and it was asserted that she had proved to be a poor employee taking excessive amounts of leave. It implied that there may have been grounds for the summary termination of her employment.
4. The judgment of EJ Andrews made awards of (1) accrued but untaken leave under the Working Time Regulations 1998 (2) A payment of commission which may have been claimed under Part II of the Employment Rights Act 1996 or under the Employment Tribunals (Extension of Jurisdiction) Order 1994 (3) notice pay which could only have been brought under the Extension of Jurisdiction Order.
5. The Respondent's assertion that the Claimant was not an employee would not, by itself, have been sufficient to defeat the claims for holiday pay and commission. Both of those claims could have been advanced by a self-employed "worker".
6. The Claimant was present so I asked her to tell me about the terms upon which she worked. She said that the job was full time initially 9-5 five days a week. She showed me the Respondent's response to her search for work on "gumtree" and it referred to offering her a full-time position. She told me that she was given a van for her use at work and that she worked exclusively for the Respondent. As far as she knew she was paid without any deductions but as she was not provided with any payslips she could not be sure what the tax arrangements were. In the absence of any contradictory evidence from the Respondent I had no reason to disturb the implicit assumption made in the judgment of EJ Andrews that the Claimant was an employee. If I were wrong about that then it seemed abundantly clear that she was a worker. The Respondent could not reasonably be described as one of her customers or clients even on its own description of her work.
7. The Respondent had not disputed the claim for commission in principle or the calculation of holiday pay.
8. I examined whether there was any reasonable basis for concluding that the Respondent would have been entitled to summarily dismiss the Claimant. There was no evidence provided by the Respondent merely assertions. The Claimant told me that her trips to South Africa had been previously agreed as unpaid leave and authorized. All other allegations against the Claimant were vague and lacked clarity.

In the absence of any attendance by the Respondent I had no basis for setting aside the part of the judgment relating to notice pay.

9. In the circumstances, the Respondent having failed to attend and having provided no evidence, the application for a reconsideration is refused. It is not in the interests of justice to revoke the original judgment.
  
10. At the end of the hearing the Claimant applied for a preparation time order. She told me that she had spent time preparing for the hearing and indeed she attended with all relevant documentation and well prepared for the hearing.
  
11. The Claimant indicated (although the words are mine) that she considered it unreasonable to press for a reconsideration of a judgment entered in default of presenting an ET3 and then fail to attend to argue the points raised in the application. I agree. The notice of hearing makes it clear that the matter is to be considered at a hearing on a particular date and time. The Claimant understood the need for attendance and the Respondent had no reason not to. I also consider that the points that were raised were misconceived in some respects. It was beyond any reasonable argument that the Claimant was a worker and the Respondent put forward no facts that could have amounted to a defense to her claims for accrued holiday pay and for commission. Their position appeared to be quite hopeless. I accept that the position as to "employment" was debatable but that provided a very good reason why the Respondent needed to attend and explain why it contended that engagement of an individual on fixed hours full time was not an employment relationship.
  
12. I considered that the Claimant could reasonably have spent some 3 hours preparing for the hearing although in fact she probably spent longer than that. The current hourly rate is £37 I therefore make a preparation time order in the sum of £1111.00 and the Respondent is ordered to pay that sum in addition to the sums payable under the judgment of EJ Andrews.

Employment Judge John Crosfill

Date 28 November 2017