EMPLOYMENT TRIBUNALS

Claimant: Mr R Velayutham

Respondent: Dunsten Herose Vijayakanthan
t/a Rosh Bond Street, ESSO

Heard at: Nottingham

On: 12 March 2018

Before: Employment Judge Evans (sitting alone)

Representatives
Claimant: Mr Mario Anastasiades, Solicitor
Respondent: In Person

JUDGMENT

Following the Respondent's application for a reconsideration of the Tribunal's Judgments of 27th January 2017 (Liability) and 19th May 2017 (Remedy and Costs), those judgments are revoked pursuant to Rule 70 of the Tribunal Rules.

REASONS

Preamble

1. The Claimant brought claims of unfair dismissal and wrongful dismissal following the termination of his employment. The claims were presented to the Employment Tribunal on 16th November 2016 and the Employment Tribunal sent the ET1 to the Respondent on 6th December 2016. No Response was received from the Respondent. The Tribunal therefore issued a Judgment under Rule 21 in favour of the Claimant on 27th January 2017.

2. There was then a Remedy Hearing on 19th May 2017 at which compensation and costs orders were made in favour of the Claimant.

3. The Respondent says that he was unaware of the existence of the claims against him until he was contacted at the school where he now teaches on 5th June 2017. He wrote to the Tribunal on 6th June 2017 requesting a review of the case. That letter was correctly treated as an application for a reconsideration.

4. The hearing of the application for a reconsideration took place on 12th

March 2018 and I had before me bundles prepared by each of the parties. The Claimant's bundle ran to 60 pages and an additional page which was an email from ACAS to the Claimant's Representative was added to it during the course of the Hearing. That email is dated 11th November 2016. The Respondent produced a very small bundle comprising 4 pages.

5. This judgment was given extempore at the end of the Hearing.

The Law and the Issues

6. Rule 70 of The Employment Tribunal's Rules of Procedures provides as follows:

A tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or 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 ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

7. Rule 90 of The Employment Tribunal's Rules of Procedures provides:

Where a document has been delivered in accordance with rule 85 or 86, it shall, unless the contrary be proved, be taken to have been received by the addressee –

(a) if sent by post, on the day on which it would be delivered in the ordinary course of post;…

8. The effect of Rule 90 is that the ET1 was deemed served on the Respondent on 8th December 2016. In a case where a party is alleging non-receipt of proceedings from the Tribunal, the burden is on that party to prove that they did not receive them.

9. There was a single issue for me to determine: should the judgments and costs order be revoked because this was necessary in the interests of justice as a result of the Respondent not having received notification of the proceedings.

Findings of Fact and Conclusions

10. I do not refer to all of the evidence before me in this decision but I have taken it all into account in making the following findings of fact and reaching the following conclusions.

11. The Respondent ran the business of a petrol station from 1st April 2016 until 31st October 2016. He was unable to make a success of the business. The owner of the petrol station, MRH Limited, terminated the Respondent's operating licence with effect from 31st October 2016, having given the Respondent notice of such termination.

12. Turning to the Respondent's evidence, I found the Respondent to be a credible witness. His evidence was internally and externally consistent. I find that the Respondent did not receive the ET1 form or other correspondence concerning the claim brought against him until 5th June 2017, for reasons including the following:

12.1. I find that the Respondent stopped attending the petrol station, the address of which was contained within the ET1 form (68 Upper Bond Street, Hinckley, Leicestershire LE10 1RJ), on the 31st October 2016. However the ET1 was not sent to this address until more than 7 weeks later.

12.2. The Respondent would as such only have received the ET1 form if the following owner of the licence to operate the petrol station had alerted him to the fact that it had been delivered. I accept as true the evidence of the Respondent that, although he had left his mobile phone number with his successor, his successor did not contact him to say that he had received post including post from the Employments Tribunal.

12.3. I accept as true the evidence of the Respondent that he did not receive other post sent to the petrol station at 68 Upper Bond Street following the termination of his operating licence. I accept that at first blush this seems to be a surprising state of affairs. However I nevertheless accepted his evidence to this effect as true for reasons including the following:

12.3.1. First of all, the scale of the business which he ran was very small. In reality the petrol station was owned and the main economic interest in it, held by MRH Limited. The company MRH Limited was able to correspond with the Claimant so far as necessary following the termination of his operating licence because it held his home address;

12.3.2. Secondly, he dealt with the small suppliers who provided him with goods for the shop on the petrol station and premises which he ran on his own account prior to the termination of the operating licence, so as to make sure his stocks were run down as far as possible;

12.3.3. Thirdly, I accept as true his evidence that he personally had no reason to return to the site of the petrol station following the termination of the licence to operate;

12.3.4. Fourthly, the early conciliation certificate was issued on the day that contact was made with ACAS by the Claimant, the 13th October 2016. I therefore find there were no discussions between the Respondent and ACAS about the Claimant's prospective claim. The Claimant's Representative produced an email from ACAS dated 11th November 2016. The email makes plain that ACAS were unable to make contact with the Respondent. I find the contents of the email do not suggest that ACAS left a substantive message with the Respondent, as such the email does not support an argument that in fact the Respondent did receive notification of the possibility of a claim.

12.3.5. Finally, I find that the Respondent's actions since he was contacted by the Claimant's Representative in June last year do not suggest that he is someone who "hides his head in the sand". He immediately contacted the Employment Tribunal seeking a reconsideration once he had been contacted by the Claimant's

solicitors.

13. Having found that the Respondent did not receive notification of the proceedings before 5th June 2017, and acted swiftly to deal with them thereafter, I find that it is necessary in the interests of justice for the judgments and costs order previously made in this matter to be reconsidered and, having reconsidered them, I revoke them. It is now necessary for the Respondent to enter a Response and for the matter to be dealt with accordingly.

Employment Judge Evans
Date: 16 May 2018

JUDGMENT SENT TO THE PARTIES ON

23 May 2018

FOR THE TRIBUNAL OFFICE