



EMPLOYMENT TRIBUNALS

Claimant: Mr P Beech

Respondent: Springbank House Limited (in voluntary liquidation)

Heard at: Nottingham

On: Wednesday 4th April 2018

Before: Employment Judge Faulkner (sitting alone)

REMEDY HEARING

JUDGMENT

1. The Tribunal having of its own initiative reconsidered the Judgment in favour of the Claimant dated 25 January 2018, that Judgment is revoked.
2. Notice of the Claim shall be re-sent to the Respondent, and it shall be given 28 days from the date it is so sent to present a Response.
3. The matter is re-listed for Final Hearing on 2nd and 3rd July 2018. Formal Notice of Hearing together with Case Management Orders will be provided with the Notice of the Claim.

REASONS

1. By a Claim Form presented to the Employment Tribunal on 6 October 2017, the Claimant complains of having been subjected to a detriment on the ground that he made a protected disclosure or disclosures, contrary to section 47B Employment Rights Act 1996 ("ERA") and of unfair dismissal contrary to section 94 ERA. He asserts that the reason or principal reason for dismissal was that he made a protected disclosure or disclosures and that the dismissal was therefore automatically unfair under section 103A ERA.
2. Notice of the Claim was sent to the Respondent at Cliff House Nursing Home, Cliff Hill, Clowne, Chesterfield, Derbyshire, S43 4LE on 31 October 2017. This was the address at which the Claimant was employed as an Administrator from 21 July 2016 until 26 June 2017 and was the address

provided on the Claim Form. No Response was presented and therefore Employment Judge Heap entered Judgment for the Claimant on 25 January 2018. This was sent to the Respondent at the same address on the same date.

3. On 16 February 2018, the Claimant emailed the Tribunal to draw to its attention to the fact that the Respondent is in members' voluntary liquidation. Information on the website of Companies House indicates that a winding up commenced on 23 January 2018. The liquidators, appointed on 14 February 2018, are Richard Pinder and Steve Markey of Leonard Curtis House, Elms Square, Bury New Road, Whitefield, Manchester, M45 7TA. Notice of the Judgment dated 25 January 2018 was sent to them on 22 February 2018 and Notice of this Hearing was sent to them and the Claimant on 3 March 2018.
4. On 20 March 2018, the Tribunal received a letter dated 15 March 2018 from Mrs Margaret Seldon, one of the Respondent's shareholders and the person who the Claimant says dismissed him. The letter was sent from an address in South Wingfield, Derbyshire. She said that she wrote after having the previous day been given information about this matter by the liquidators and after a telephone conversation with the Tribunal office. Her purpose in writing was said to be "to give you some necessary information to pass on to the judge". It does not appear to have been copied to the Claimant.
5. The letter states that on 24 July 2017 Cliff House Nursing Home was sold to "Halcyon Care". The Claimant confirmed to me that this was indeed the case. Mrs Seldon said that her son, Paul Anthony Seldon, remained working at the home until mid-September 2017 to complete the sale and ensure a smooth transition to the new owners for the residents. She said that no mail was forwarded by Halcyon Care to the Respondent. As the Companies House website shows, the Respondent's registered office address was formally changed on 19 October 2017 to the South Wingfield address.
6. Mrs Seldon's letter expressed concern at the case being heard without notification to the Respondent and thus without any defence or provision of information on its behalf. It asserted that the Claimant was aware that Cliff House had been sold and that he could have informed the Tribunal of the address of the Respondent's shareholders, which I take to be the South Wingfield address. The letter asked the Tribunal to check that there are no other claims, as "we are most concerned that this could happen again" and concluded by stating that the Respondent was put into voluntary liquidation because of "the untoward effect it was having on [Mrs Seldon's] health". On 3 April 2018, the day before this Hearing, the Tribunal office wrote to the parties to inform them that Employment Judge Milgate had ordered that the case should remain listed and that the Respondent would be allowed to address the issues raised in Mrs Seldon's letter at the Hearing.
7. No doubt having received the letter of 3 April, Mrs Seldon emailed the Tribunal on 4 April 2018 "requesting that this case should be adjourned", saying that she had been sent "no notification of anything to do with the matter until it had been heard", that she had not had any opportunity to seek legal advice and did not know why the case had been brought to the

Tribunal in the first place. She reiterated that she believed the Claimant was aware of the directors' contact details and confirmed that these are available at Companies House. This email was drawn to my attention around two hours before the Hearing was due to commence. I immediately arranged for the parties to be informed by email that the Hearing would go ahead, reiterating that the Respondent's comments could be considered at the Hearing and urging the parties to attend. At my direction, the parties were also telephoned to confirm the content of the Tribunal's communication. I was subsequently informed by the Tribunal clerk that Mrs Seldon had said she would not be attending as she knew nothing about the claim, had not been able to take advice and was unwell, adding that she would just have to appeal any decision made. The clerk informed me that she had also spoken with the Claimant who was on his way to the Hearing.

8. Accordingly, whilst the Claimant attended the Hearing, there was no representation for the Respondent. I explained to the Claimant the background set out above and informed him that of my own initiative and in the interests of justice I was proposing to reconsider and revoke the Judgment dated 25 January 2018. This was on the basis that it was plain from the Tribunal file that although the Respondent had changed its registered office address on 19 October 2017 the Notice of the Claim had been sent on 31 October 2017 to its former address at Cliff House, such that it appeared the Respondent had not been given opportunity to respond to the Claim, had no knowledge of it until early to mid-March 2018 and even at the date of this Hearing had not received a copy of the Claim Form.
9. Rule 21 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that where no Response is presented within the normal 28-day time limit, judgment may be issued, as it was in this case. Rule 70 says that a Tribunal may either on its own initiative or on the application of a party reconsider any judgment where it is necessary in the interests of justice to do so.
10. On reconsideration the decision may be confirmed, varied or revoked. Rule 71 provides a time limit for a reconsideration application of 14 days from the date the original decision was sent by the Tribunal. It also requires that a copy be sent to the other parties. Rule 72(1) entitles a Judge to refuse an application if it is considered there are no reasonable prospects of the original decision being varied or revoked. If it is not refused then the Tribunal must ask the other parties for a response to the application within a stated timescale. Rule 73 says that where a Tribunal reconsiders a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and it shall be reconsidered in accordance with rule 72(2) as if an application had been made and not refused. Rule 72(2) says that the original decision shall be considered at a hearing unless a Judge considers this is not necessary in the interests of justice.
11. I invited the Claimant's comments on my proposed reconsideration. He said that he believes his representative (who is no longer instructed) sent some correspondence to the Respondent at Cliff House and at the address from which Mrs Seldon's letter had been sent to the Tribunal on 15 March 2018. That is clearly not the same as the Tribunal providing

Notice of the Claim however, and there is no obligation on a respondent to respond to a Claim until the Tribunal does so. The Claimant also said that he finds it hard to believe that in the 7 months since his dismissal no correspondence has been sent to the Respondent by Halcyon Care.

12. I am aware that there has been other fairly recent Tribunal litigation involving the Respondent though I have not read any record of or judgment in any such proceedings. The Claimant was himself aware of those proceedings. Whilst he says that in the previous case the Respondent left everything to the last minute, he confirmed that a response was presented and that there was no judgment in default. That very much suggests that the Respondent is not simply trying to avoid or delay the current proceedings. On that basis, and for the reasons given above, it is plainly in the interests of justice to reconsider and revoke the Judgment of 25 January 2018 and I do so accordingly. I note that rule 73 requires the Tribunal to inform the parties of the reasons why the decision in question is being reconsidered. I was of course able to comply with that rule in respect of the Claimant by outlining the issues to him at this Hearing and inviting his comments. Strictly speaking I was not able to do so in respect of the Respondent, but was satisfied that Mrs Seldon's letter was, without expressly saying so, supportive of the course of action I have taken, and on a generous interpretation could itself be read as an application for reconsideration, even though not copied to the Claimant. I was also mindful that writing to her to provide formal notice of my proposal would simply introduce further and unnecessary delay which I was keen to avoid.
13. The Respondent will now be served with formal Notice of Claim and be given the usual 28 days to present a Response. I indicated to the Claimant that if no Response is presented it is highly likely save in extreme circumstances, that default judgment would then be entered again and a Remedy Hearing arranged. If a Response is presented, then the case will proceed in the usual way.
14. I am concerned to get the case moving as quickly as possible to a final hearing. The Claimant says that in addition to his own evidence, he will be calling one other witness who can speak to the narrow point of holiday pay being paid to her after the Respondent said the Claimant had done so incorrectly. The Claimant says the Respondent relied on that as one of the reasons for his dismissal. There was only one alleged protected disclosure, made verbally to the relevant local authority and then at their request in writing two days later. The Claimant says that within a matter of hours of him informing the Respondent's directors that he had also at the local authority's request disclosed CCTV footage, he was dismissed. It therefore seems to me that there is a narrow factual basis to the claim focussed around a few days in June 2017, the essential issues being likely to be whether there was a protected disclosure and the reasons for the Claimant's dismissal, assuming dismissal is admitted.
15. The Claimant said that he received no benefits from the Respondent other than auto-enrolled pension membership. He got a new job within 5 weeks of leaving the Respondent and says that there is a negligible pay difference between the two roles. He seeks an injury to feelings award in the middle band of such awards (given the date of termination this is £8,400 to £25,200) and an uplift in compensation under section 124A of

the ERA because he says that in dismissing him the Respondent failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. He seeks around £25,000 in total. If he succeeds in one or more of his complaints therefore, it seems to me that the question of remedy is also likely to be relatively straightforward.

16. On this basis, I am satisfied that two days is enough to deal with the matter at final hearing, including remedy if necessary and the giving of judgment. I therefore listed the case to be heard on 2 and 3 July 2018 in Nottingham before an employment judge sitting with members. The Respondent will be served with Notice of the Claim. Both parties will be served with formal Notice of Hearing, which will also incorporate case management orders which the parties are expected to comply with to ensure the case is ready for the Final Hearing. Given what is stated above, I do not see the need to schedule a Telephone Preliminary Hearing for this purpose.
17. The Tribunal is required to serve the above papers on the Respondent's liquidators. I have however arranged for this record of the Hearing to be copied to Mrs Seldon at the South Wingfield address so that she is aware of how the case will now progress and can liaise with the liquidators accordingly should she wish to do so.

Employment Judge Faulkner

Date 5 April 2018

JUDGMENT SENT TO THE PARTIES ON

07 April 2018

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FOR THE TRIBUNAL OFFICE