



EMPLOYMENT TRIBUNALS

Claimant

Miss L Sanders

v

Respondent

Divinus Support Limited

PRELIMINARY HEARING

Heard at: Bury St Edmunds

On: 27 June 2018

Before: Employment Judge Laidler

Appearances:

For the Claimant: Mr I Burnett, Anglia Care Trust.

For the Respondent: Mr & Mrs Burke, Counsel/Solicitor/Directors.

JUDGMENT

1. This matter was adjourned to 24 August 2018 at 10.0am at Bury St Edmunds Employment Tribunal, 1st Floor, Triton House, St Andrews Street North, BURY ST EDMUNDS, IP33 1TR.
2. Further case management orders are made as set out below.

REASONS

1. The claimant issued proceeding on 19 April 2018 claiming unpaid holiday pay. The claim was sent to the respondent by letter of 18 May 2018. The response was required by 15 June 2018.
2. No response had been received from the respondent.
3. Mr and Mrs Burke attended this hearing and advised that they only received the papers from the Employment Tribunal last Tuesday 19 June 2018. That may however be because they had been absent on holiday from 1 – 15 June 2018 and then away again for a couple of days.

4. The respondent wishes to defend the proceedings and it was explained to them that they could make an application under rule 20 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 for an extension of time for presenting a response. That must be accompanied by a letter setting out the reasons for the delay and have attached to it the actual response form setting out the grounds upon which the respondent wishes to defend the proceedings. It was ordered that any such application be made within 7 days of the date of this hearing.
5. The respondent did attend with some payslips, copies of which were given to the claimant's representative. He will now consider these and indicate to the respondent if any of his calculations change.

Application to amend

6. In a supporting document for today's hearing dated 19 June 2018, Mr Burnett stated that having now recalculated the matter he believed there was some annual leave due to the claimant for the period 23 July 2015 when her employment started to the end of her first leave year on 31 March 2016. Leave to amend has been given in accordance with paragraph 3 of that letter. Mr Burnett will need to give consideration to whether or not there are any time points which arise from a claim for that period.
7. Both parties were reminded of the services of ACAS, who remain available to assist the parties in reaching a negotiated compromise. The parties were also reminded that this is a very complex area and the respondent may wish to take independent legal advice in regard to their position. The Tribunal is not in a position as a judicial body to offer such advice.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Amended response/Further information

- 1.1 If the respondent wishes to apply for an extension of time for the presenting of its response within rule 20 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 it must submit the same to the Employment Tribunal within 7 days of the date of this hearing and make that application in accordance with rule 20.

2. Disclosure of documents

- 2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **21 July 2018**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.

- 2.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.
- 2.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
- 2.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

3. **Bundle of documents**

- 3.1 It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 3.2 To this end, the claimant is ordered to notify the respondent on or before **31 July 2018** of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the respondent's witnesses, during the course of the hearing.
- 3.3 The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **7 August 2018**.
- 3.4 The respondent is ordered to bring sufficient copies (at least five/three) to the tribunal for use at the hearing, by 9.30am on the morning of the hearing.

4. **Witness statements**

- 4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 4.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.
- 4.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 4.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

4.5 It is ordered that witness statements are exchanged so as to arrive on or before **10 August 2018**.

5. Listing the hearing

5.1 The matter has been listed for a hearing on **24 August 2018** at **Bury St Edmunds Employment Tribunal, 1st Floor, Triton House, St Andrews Street North, BURY ST EDMUNDS, IP33 1TR.**

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Laidler

Sent to the parties on:

.....26.07.18

For the Tribunal:

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