



EMPLOYMENT TRIBUNALS

Claimant: Ms S Paterson

Respondent: Claire and Sarah Kay

Held at: Manchester

On: 10 September 2018

Before: Regional Employment Judge Parkin

Representation:

Claimant: In person

Respondent: Miss A Del Priore, Counsel

JUDGMENT AT A RECONSIDERATION HEARING

Employment Tribunals Rules of Procedure 2013
Rule 72

The judgment of the Tribunal is that:

- 1) the respondents' time for presenting their response is extended and the response and the response presented by their representative on 25 May 2018 is accepted;
- 2) the Rule 21 Judgment issued on 23 February 2018 is revoked;

And, it is ordered that:

- 3) the respondents are to disclose any documents they rely upon and the claimant is to disclose any additional documents she relies upon, to each other by 22 October 2018;
- 4) the parties are to agree the contents of a single bundle of documents for the hearing by 12 November 2018. The claimant is to have conduct of preparing copies of the bundle and is to bring two copies to the hearing;
- 5) the parties are to exchange witness statements for any witness giving evidence at the hearing, including the claimant and the respondents, by 3 December 2018;

- 6) the respondents are to make their proposals for giving evidence and the conduct of the hearing to the Tribunal and the claimant by 3 December 2018; and
- 7) **the final hearing is listed before an Employment Judge sitting alone on Monday, 3 December 2018 at Manchester Employment Tribunal, Alexandra House, 14-22 The Parsonage, Manchester M3 2JA at 10 am or as soon after that time as the Tribunal can hear it. One day has been allocated to this hearing.**

REASONS

- 1 This was a Reconsideration Hearing listed at the request of the respondents following the Rule 21 Judgment issued by Employment Judge Porter on 23 February 2018, when no response had been presented to the claim.
- 2 The claimant worked as a carer at the home of the respondents for one or both respondents and was employed as such by either Claire Kay (the respondent's version) or by both respondents together (the claimant's version, supported by document produced at this hearing).
- 3 Although a notice of claim was sent on 15 January 2018 to the respondents' home address, no response was presented and no mail was returned as undelivered by Royal Mail.
- 4 Accordingly, after the claimant provided additional details of her claims for unpaid wages, holiday pay and notice pay by email dated 22 February 2018, the Rule 21 Judgment was issued on 23 February 2018 and the hearing listed on 26 February 2018 was vacated.
- 5 The respondent Claire Kay wrote to the Tribunal on 28 February 2018 seeking a reconsideration and a formal application was subsequently made by legal representatives on her behalf on 25 May 2018 enclosing a draft ET3 response, which Claire Kay had apparently sought to send earlier. That draft response, on behalf of Claire Kay, acknowledged her as the employer but disputed all sums claimed by the claimant and maintained the Rule 21 Judgment was the first she knew of the proceedings. It said she suffered from multiple physical and psychological conditions, including Addisons disease and a brain tumour, dyslexia and dyspraxia and that she was bed-bound.
- 6 At the hearing, the claimant acknowledged the condition of Claire Kay although pointing out that Claire was able to manage her affairs (and use a laptop and social media) and also that of Sarah Kay, whom she had also cared for. She provided compelling documentary evidence to suggest both sisters were the employer and the Judge did not amend the name of the respondent, although the proper identity of the employer can be determined at the final hearing.
- 7 Whilst considering evidence of the respondents' ignorance of the proceedings less than satisfactory, the Judge considered it in accordance with the overriding objective that the claimant's claims be determined on the merits rather than on the basis of a paper judgment and thus, on reconsideration,

granted an extension and accepted the response out of time. The Rule 21 Judgment is revoked.

- 8 The respondents will need to give consideration to the claimant's documentation and the evidence they will need to produce to seek to resist her claims. It may be that the respondent Claire Kay can give evidence electronically, for instance by telephone or by Skype, and the respondent should notify the claimant and the Tribunal of their proposals when they exchange witness statements.

Regional Employment Judge Parkin

11 September 2018

JUDGMENT SENT TO THE PARTIES ON

...25 September 2018
AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE