



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs L Sullivan

v

Mr Steve Parsons T/a Cawston Post
Office & Stores

Heard at: Norwich

On: 29 August 2018

Before: Employment Judge Postle

Appearances

For the Claimant: Mrs S Davenport, Solicitor

For the Respondent: In person, Mr S Parsons

RECONSIDERATION OF DEFAULT JUDGMENT

1. The respondent's application for a reconsideration of the default Judgment (Rule 21), dated 17 April 2018 is refused
2. The respondent is ordered to pay the claimant costs of £2,925.00

REASONS

1. At this morning's hearing, we have a witness statement from the claimant and a bundle of documents prepared by the claimant's solicitor of 66 pages.
2. Mr Parsons has now attended in person as there is no longer anyone acting for him, he has no documents despite this being his application for a reconsideration of the Default Judgment dated 17 April 2018.
3. The documents show that the claimant's solicitor wrote to the respondent, (Mr Parsons), on 6 September 2017, (pages 60 – 62), that letter set out a potential claim, the factual basis of the claim, calculations for holiday pay, loss of maternity allowance and failing to provide a statement of particulars.

4. Initially, Mr Parsons, in the witness box, denied ever receiving this letter, despite the fact that this letter was correctly addressed to his place of work, Cawston Post Office and Stores, which is of course the correct postal address. However, the claimant's solicitors produced a document showing, from the Royal Mail, that that letter had been clearly delivered and signed for. Mr Parsons then changed his evidence in accepting the letter must have been delivered, but says he never saw it.
5. ACAS were appointed conciliators, they emailed the claimant's solicitors on 9 October 2017, to say they had made contact with Mr Parsons and he was going to speak with his solicitor and get back to ACAS.
6. On 19 October 2017, the claimant's solicitors spoke to ACAS whom had made several further attempts to speak to Mr Parsons, leaving messages but he failed to return any calls. Mr Parsons said in evidence he didn't receive or recall such messages.
7. Then notice of proceedings, notice of a preliminary case management hearing, was sent to the respondent, Mr Parsons. Again, to the correct address, Cawston Post Office with the correct post code. That was not returned by Royal Mail as not known or undelivered. Despite this, Mr Parsons says he did not receive it.
8. The employment tribunal judgment was sent to the respondent, again to the post office on 17 April 2018, (21). Mr Parsons first said in evidence, and also his then adviser's Peninsula, that he became aware of the judgment, via a third party, on-line. Despite the fact that judgments are not registered until one month after judgment is entered. This clearly cannot be the case because he contacted Peninsula, in his own evidence, at the end of April. Mr Parsons changed his evidence to accepting he must have seen the judgment first and then someone contacted him later about seeing the judgment on-line.
9. His defence to not responding and engaging in the process was he never received any of the papers and unfortunately, they must have gone astray in the post. Notwithstanding the fact that Mr Parsons accepts his business is the post office in Cawston and the address and post code is correct.
10. Mr Parsons further argues that he has a defence to the claim and that the only reason he dismissed the claimant was because she swore at him. He has now seen a copy of the transcript of the phone record of the meeting on the 12 August. This is not withstanding the fact his own response, prepared on his behalf by Peninsula, suggests that any offensive expletive was on 11 August. Furthermore, Mr Parsons now says that he didn't actually see a copy of the response before it was filed by her then advisors Penninsula.

11. The tribunals conclusions. It has to be said that throughout this morning's hearing, Mr Parsons evidence has moved like shifting sands and the tide. When he is backed into a corner he appears to change his evidence. It is frankly inconceivable and fanciful to suggest that all the documents went astray in the post, particularly as Mr Parsons runs the post office in Cawston, the address for him is the post office in Cawston, the post code is correct, furthermore none of the documents have been returned by the Royal Mail as undelivered. Mr Parson's evidence was even more lacking in creditability when he originally said he didn't receive the letter before action sent by the claimant's solicitor in September. Then when it was pointed out to him that the letter from the claimant's solicitors had been signed for at his post office, he then suggested it must have been somebody else and offers no explanation as to why in those circumstances he did not read the letter or it came to his attention.
12. The tribunal concludes that Mr Parsons finds the truth an alien concept. It was fanciful for Mr Parsons to suggest he did not receive the claim in the circumstances.
13. The tribunal is entirely satisfied, clearly the letter of 7 September was received and in the absence of the claim being returned by the Royal Mail, that was also received by Mr Parsons. For reasons best known to him, possibly he thought the matter would go away and the tribunal procedure was something he could simply ignore.
14. Parties to proceedings in employment tribunals must be aware that Parliament provided clear rules as to how employment tribunals operate, they require the cooperation of the parties to the proceeding, that being the claimant and respondent. The notice of hearing and the claim form is quite clear in what a respondent is required to do and when they are required to do it by. Those that do not engage in the process must face the consequences.
15. The tribunal, accepts that the respondent was aware of the proceedings and did receive the claim form and accompanying instructions and we repeat, for reasons best known to himself, thought the process either irrelevant or he need not engage in it. For those parties that act in that manner, they must realise to ignore the proceedings entitles the claimant, as it was in this case to judgment in default.
16. In the circumstances there are no valid grounds justifying revocation of the judgment in the interests of justice and there is no arguable defence to the claim as advanced by Mr Parsons today that is credible.
17. At the conclusion of the respondent's application, Mrs Davenport on behalf of the claimant, made an application for costs on the ground that the respondent's failure to engage in the process was unreasonable and as a result of Mr Parson's unreasonable conduct the claimant had been put to further legal expenses in dealing with this morning's application.

18. The power to award costs arises under the Employment Tribunal Rules of Procedure 2013, particularly rule 76 it is a two stage process. The tribunal must expressly asks the question whether any matters under rule 76 have arisen and if so should the tribunal exercise its discretion to make an award for costs.

19. Having regard to the failure by Mr Parsons to engage in the process, the tribunal views this as unreasonable behaviour and conduct, disruptive and in those circumstances, the tribunal are entirely satisfied it is an appropriate case to exercise their discretion to make an award of costs. The respondent is ordered to pay the claimant's costs totalling £2,925 in respect of the respondent's application for the reconsideration of the default judgment and the extra expense and trouble the claimant has been put to in dealing with her claim.

Employment Judge Postle

Date: 26 October 2018

Sent to the parties on: 26 October 2018

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For the Tribunal Office