



THE EMPLOYMENT TRIBUNALS

Claimant: Mr Charles Clark

Respondent: Continental Leaves and Beans Limited

Heard at: Bury St Edmunds Employment Tribunal

On: 17 October 2018

Before: Employment Judge M Warren (sitting alone)

Representation

Claimant: In Person

Respondent: Mr Kie Humphries, Director.

JUDGMENT

1. I reconsider and revoke my Judgment dated 27 March 2017, sent to the parties on 11 April 2018.
2. The Respondent's application for an extension of time for filing a Response is granted and the Response filed on 29 July 2018 shall be accepted.

REASONS

Background

1. The background to this case is a sorry tale. I will begin with setting out the history, based upon what is in the tribunal file and what I have been shown and told today.
2. Mr Clark issued his claim on 17 November 2017. He seeks 2 ½ days holiday pay and 7 days' pay.

3. The case was listed for hearing, (on 16 May 2018). The ET1 together with a notice of hearing, was sent to the Respondent by letter dated 6 December 2017. The address for service is the Respondent's registered office.
4. A response was due on 3 January 2018. None was received.
5. On 27 March 2018, I signed a default Judgment granting Mr Clark Judgment in the sum of £768. This was actioned by the Administration and purportedly forwarded to the parties by letter dated 11 April 2018.
6. Whilst Mr Clark received the correct Judgment, that which was sent to the Respondent was a Judgment on a different case, with a different case number, with different named parties and which related to a case of sexual harassment. It was a Judgment signed by a different Employment Judge.
7. On 13 April 2018, Mr Humphreys emailed the Employment Tribunal at Watford, (Watford ET) attaching a scan of the Judgment the Respondent had received, explaining that this did not appear to be a matter relevant to the Respondent and asking why they had received it.
8. On 2 May 2018, the Watford ET Administration replied, attaching the correct Judgment.
9. On 3 May 2018, Mr Humphreys wrote by email to the Watford ET to explain that the Respondent had not received any papers relating to this case and that that they have experienced problems with the delivery of post. He asked for the case to be, "reopened". The email requested future correspondence be sent by email as well as by post.
10. A few days later, precisely when is not clear, the Respondent received a Judgment from the Employment Tribunal with a letter dated 3 May 2018. This Judgment purports to strike out the Claimant's claims on the grounds that he had failed to comply with an order dated 17 October 2017 and that the claim had not been actively pursued. A hearing said to be fixed for 4 and 5 September 2018 is said to be no longer taking place. The Judgment appears to be signed by Employment Judge Henry and is dated 3 May 2018. This Judgment is not on the tribunal paper file.
11. On 31 May 2018, the Respondent received a visit from a High Court Enforcement Officer, demanding payment of £1,797.75 in respect of Mr Clark's Judgment. The Enforcement Officer was shown a copy of the strike out Judgment. The Enforcement Officer contacted the Watford ET. According to a report before me, it looks as if a copy of the strike out Judgment had been sent to the Watford ET. The report states as follows, "*spoke to Susan at Watford Employment Tribunal Court 01923281750 – went through the claimants file and spoke with Employment Judge Henry who confirmed the claim was not struck out and went in the favour of the claimant*". Upon being told that removal vehicles were on their way to remove goods, the Respondent paid the sum demanded.

12. On 1 June 2018, the Respondent wrote a letter of complaint to the President of the Employment Tribunal, a copy of which is not on the file.
13. On 3 June 2018, a letter was written to the Respondent stating that as Judgment has been entered, it will need to apply for reconsideration. That letter states that it had been written on my instructions, although in fact the instructions were from Employment Judge Laidler. To be clear, she gave instructions for such a letter to be written on the basis of the Respondent's email of 3 May 2018. She would have been unaware of the events which had happened in the meantime and would not have seen the rogue strike out Judgment.
14. On 28 June 2018, the Respondent also wrote a complaint to the Regional Employment Judge, a copy of that is not on the file.
15. As a consequence of the complaints, the file was referred to me as the Judge who had given the default Judgment. I elected to treat the Respondent's email of 3 May 2018 referred to above, as an application for reconsideration. I caused a letter to be written to the parties explaining as such and explaining that the Respondent must file a response on a form called an ET3, accompanied by an application for an extension of time. I gave those instructions on 6 July 2018 and they were carried out in the form of a letter to the parties dated 9 July 2008.
16. The Respondent submitted an ET3 on 29 July 2018. In short, the claim is denied and there is an Employer Contract Claim in respect of tools stolen, either by the Claimant or as a consequence of his leaving premises unlocked.
17. The matter has come before me today to consider the Respondent's application for a reconsideration and for an extension of time to file its response.

Evidence

18. I heard evidence on oath from Mr Humphreys and from his mother, Mrs Humphreys, who is also a director of the Respondent.
19. I was provided with a copy of the Judgment dated 3 May 2018, purporting to strike out the Claimant's claim, which is not on the file. I was shown on Mrs Humphreys mobile phone, a scanned copy of a covering letter dated 3 May 2018.
20. Mr Clark provided the Respondent and I with the report from the Enforcement Officer referred to above.
21. I did not hear evidence from Mr Clark. I gave him the opportunity of making submissions.

Findings of Fact

22. I find as fact, the chronology set out above under the heading of, "Background".
23. In addition, I accept the evidence of Mr Humphreys and his mother, Mrs Humphreys, that the Respondent has experienced difficulties with delivery of its mail over the last four years. I was shown a copy of an email from Royal Mail dated 21 January 2017. I accept that sometimes the Respondent's post is delivered to another village and sometimes it is delivered to other addresses within the same village, just as the Respondent receives mail at its address belonging to others.
24. I accept the evidence of Mr Humphreys and his mother that the Respondent did not receive the original ET1 through the post. I accept their evidence that the first they knew of these proceedings was when they received an email containing the correct Judgment from the Watford ET on 2 May 2018. They protested immediately that they had not received the papers.
25. I accept that upon receiving the Judgment of Employment Judge Henry, apparently striking out the claim, the Respondent's officers thought that their protest had resulted in Mr Clarke's case being struck out and that the first they knew this may not be so was when the bailiff visited.
26. I also accept that the Respondent did not receive through the post an earlier notice that enforcement action was to be taken.

The Law

27. Rule 70 of the Employment Tribunal's Rules of Procedure 2013, makes provision for the reconsideration of Tribunal Judgments 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.

Conclusions

28. The Respondent did not receive notice of these proceedings. Default Judgment was entered because no formal response had been received, but none could be submitted as the Respondent was unaware of the requirement. It would be quite unjust and contrary to the interests of justice, where there is a genuine dispute as to whether or not the Respondent owes the Claimant holiday pay and wages, for the Claimant to benefit from what may be a windfall arising out of an unfortunate set of circumstances.

29. It is particularly unfortunate that the Respondent has already paid approximately £1797.75, of which approximately £770 has gone to the Claimant and the balance to the High Court Enforcement Officer. Enforcement of judgements is outside the jurisdiction of the Employment Tribunal and these are therefore matters outside my control.
30. However, within my control is to revoke my original Judgment on the basis that it is in the interests of justice to do so.
31. Employment Tribunal Judgments are placed in a register to which the public have access on the internet, Orders are not. For this reason, in accordance with usual practice, a note of our case management discussion and case management orders are set out in a separate document.

Dated: 19 October 2018

Employment Judge M Warren

JUDGMENT SENT TO THE PARTIES ON

2 November 2018.....

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FOR THE TRIBUNAL OFFICE