



THE EMPLOYMENT TRIBUNALS

Claimant
Ms M Lockey

Respondent
Mr Jake Dodd t/a Alex Edward Salon

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS

ON 8th November 2108

EMPLOYMENT JUDGE GARNON

Appearances

For Claimant in person

For Respondent: in person

JUDGMENT (on reconsideration)

The judgments I gave on 5 July 2018 on liability and on 13 August 2018 on remedy are revoked. I accept the employer's response and contract claim. A one day Hearing will listed for to decide the claim and counterclaim and directions given in a separate Order.

REASONS

1. The claim was served on 1st June 2018 on the business address of the respondent . A response was due by 29th June 2018 but none was received. I was required by rule 21 of the Employment Tribunals Rules of Procedure 2013 to decide on the available material whether a determination could be made and , if so, obliged to issue a judgment which could have determined liability only or liability and remedy.

2. I had in the claim form sufficient to enable me to find the claims proved on a balance of probability, and to find the claimant could show an exception to the need to have two years continuous employment to claim unfair dismissal that being she was dismissed for asserting her statutory right to be paid wages . I had some information on remedy but not enough. A remedy hearing was listed for 13 August to commence at 11:30 am.

3. At 10:30 am the respondent telephoned the tribunal saying he had a sick note, could not attend and wanted a postponement. He was informed he had to make an application in writing. He said he intended to apply for a reconsideration of the judgment on liability.

4. At 11:24 he emailed the tribunal attaching a scanned GP's sick note which did not cover the period during which he could have been expected to respond to the claim. Not a week goes by when I or one of my colleagues do not have to deal with respondents who fail to submit a response in time but when they receive a judgment under rule 21 suddenly contact tribunal with some explanation for not having done so. The claimant did not attend the hearing either . I refused to postpone and gave judgment on remedy for the minimum amounts to which I could see from the limited information provided she would be entitled. I gave full written reasons for both judgments which I need not repeat.

5. Explanations by respondents for not responding in time vary from obviously good to arguable to obviously bad. This had all the hallmarks of the last. The respondent submitted an application for reconsideration and a draft response. Under Rule 71 an application for reconsideration has to be made within 14 days of the date upon which the reasoned judgment was sent to the parties. The first contact from the respondent was well after the liability judgment, but I accepted the time should be extended for the same reason as I gave for not rejecting under Rule 72 (1).

6. Under rule 72(1) I had to consider this application on a preliminary basis without a hearing. The respondent put forward one argument only to excuse his failure to respond to the claim being his ill health which had caused him not to attend the workplace so he did not know of the claim until he returned two months later. In the reasons for my judgment of 13 August, I said the sick note he had sent to the Tribunal was dated as effective from 22 June to 16 August which did not explain why he had not contacted the Tribunal until 13 August. The documents he sent subsequently revealed for the first time a sick note covering 25 May to 21 June, so one sent in earlier was a continuation of ill health, not the start of it. An Order was sent to the claimant seeking her views on the application to be provided by 17 September 2018. Also both parties were to inform the Tribunal by 25 September 2018 whether they believed the reconsideration application should be determined at, or without, a Hearing. Both requested a hearing.

7. The tribunal has been sent by both parties documents and argument on the merits of the claim. The draft response indicated the respondent wishes to make an employers contract claim. I caused a letter to be sent to the parties on 27 September saying the only issue I was to decide today was whether the judgments I had issued should be revoked.

8. Mr Dodd said due to his illness he had not attended the workplace from 25 May for at least two months. The claimant was accompanied by her mother. Both of them said Mr Dodd was at the workplace in June and they, together with a host of witnesses they could produce, had seen him there. They said this was simply another delaying tactic. Mr Dodd responded he could produce a host of witnesses to say was not there. None of these witnesses, apart from the claimant's mother, was present today.

9. The only ground for a reconsideration is whether one is necessary in the interests of justice. Since Parliament first introduced the procedure for issuing a judgment without a hearing where a respondent failed to put in a response , it has worked very well in many cases . However I am convinced Parliament never intended that where there was real

doubt as to whether the proceedings had come to the respondent's attention, the judgment issued in default of response should be allowed to stand. The basic principle of justice is that everybody is entitled to a hearing.

10. I cannot say I am absolutely convinced by Mr Dodd's argument but there is a basis on which I could find he did not know about these proceedings. That basis consists of two medical practitioner sick notes. I cannot ignore them. It is not in the interests of justice to prevent a party who potentially has a reasonable excuse for not presenting a response within time to do so late. I therefore have decided to revoke the judgements, accept the draft response and set this case down for hearing.

TM Garnon Employment Judge

Date signed 8 November 2018