

3. No response having been received by the Tribunal, a default judgment was made under Rule 21 on 26 September 2018 (Employment Judge Sage) as follows:
 1. *The Claimant's claim for unpaid holiday pay is well founded.*
 2. *The Claimant was dismissed in breach of contract.*

A hearing will be listed for 1 day to deal with remedy for holiday pay and breach of contract. The hearing will also determine whether the Claimant was dismissed for raising a protected disclosure contrary to Section 103A and if so, what compensation should be awarded.
4. While there is no specific power reserved for the reconsideration of default judgments under Rule 21, the tribunal's general powers under Rules 70 – 73 apply, so the test is whether a reconsideration is necessary in the interests of justice. On reconsideration, the decision in question may be confirmed, varied or revoked.
5. On behalf of the Respondent, Mr Maritos said that at the time the Claim Form was sent to the Respondent, it had no HR function (Peninsula have now started assisting the company). The letter enclosing the Claim Form had been forwarded to the directors, but had not been opened. The first the Respondent was aware of the claim was when the agenda for a case management hearing was forwarded, but, rather than do anything, the Respondent waited for further correspondence to explain the position. What arrived next was the default judgment. Peninsula was instructed in December 2018 and that is when matters were taken in hand.
6. On a practical level, there was going to be a hearing to determine whether the Claimant was automatically unfairly dismissed. It was entirely possible that the Claimant might not succeed with that claim, but then have an undeserved windfall in respect of her other claims, simply owing to the Respondent's inefficiency.
7. As Ms Kuah said, this was all very unimpressive. The Respondent had received correspondence and failed to act upon it. There had been about 4 months between receiving the case management agenda and the Respondent actually doing anything about it. Ms Kuah also explained that this was potentially a high value claim. She was previously earning about £55,000 per annum and had been out of work for not far short of a year. Her new job earned her about £30,000 a year less. Therefore, even the breach of contract and unpaid annual leave claims had potentially significant value.
8. This was a difficult decision, because on the one hand, there was – as Ms Kuah said – very unimpressive conduct by the Respondent. It is difficult to understand why important letters should go unopened and why the Respondent effectively buried its head in the sand. On the other hand, I note from the draft response that the two versions of events are completely opposed. It is quite possible that the claim for automatically unfair dismissal would not succeed and that the other claims might also be without merit. It troubles me that this small business might nevertheless find itself having to pay relatively significant sums in respect of those claims.

9. I accept that some might see that as the price the Respondent should pay for its failures, but, on balance, it seems to me that the interests of justice require a hearing at which the competing evidence should be heard and tested. However, I would stress that this is a borderline decision and I appreciate the Claimant's frustration with what has happened. I am confident that the Respondent will now act properly, because it has representation.
10. In those circumstances, the application for reconsideration of the default judgment in respect of the claims for breach of contract and unpaid annual leave is revoked. The hearing will now consider all aspects of the claim.
11. I then went on to case manage the claim and give directions, which are contained in a separate Order.

Employment Judge Cheetham QC

Date 7 January 2019