



THE EMPLOYMENT TRIBUNALS

Claimant
Mr D E Lynch

Respondent
Harkers Transport Ltd

JUDGMENT AT A RECONSIDERATION HEARING

HELD AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON

ON 29th January 2018

Appearances :

Claimant In person

For the Respondent Ms S Furness Solicitor

JUDGMENT

I revoke my Judgment of 5th January 2018 because it is necessary in the interests of justice to do so and order the decision be taken again. Part of the claim ,unfair dismissal, is dismissed on withdrawal.

REASONS

1. The respondent has applied for a reconsideration of a judgment on liability only made by me on 5th January 2018 under Rule 21 of the Employment Tribunal Rules of Procedure 2013 (the Rules) in circumstances where no response had been presented. The claims found proved were age discrimination contrary to the Equality Act 2010 (the EqA), failure to pay compensation for untaken annual leave, wrongful dismissal (breach of contract) and unlawful deduction of wages. I did not find the claim of unfair dismissal proved because on the face of the claim the claimant lacked the qualifying service needed and there was no obvious exception to that requirement. Today he withdrew it and agreed it should be dismissed.

2. The claim was presented on 1st December 2017. It was posted to the respondent's address with a blank response form for completion on Monday 4th December 2017. A preliminary hearing notice was sent to the respondent in the same envelope with an agenda for completion. The same was sent to the claimant On 20th December the claimant's completed agenda was received by recorded post . None has ever been received from the respondent because it did not get around to completing it . The letter to the respondent giving notice of the claim says it may respond online or on the form enclosed and if no response is received by 1st January, and no application for an extension of time has been made a judgment may be issued.

3. No response was received by the due date of 1st January 2018. The file was referred to me on 2nd January. In the reasons for the R21 judgment I wrote that I allowed some

extra days because letters may have been delayed in the Christmas post. I signed judgment on Friday 5th January and it was sent to the parties on Monday 8th. It would have been received by the respondent in the normal course of post by 10th January. The first contact was a letter of 12th January sent by e-mail by Hay & Kilner Solicitors.

4. Hay & Kilner said in their letter the response was posted on 15th December and has been “lost in the post”. They enclosed what was said to be a “copy” of the response form sent. I have heard many fanciful “lost in the post” arguments put by respondents and claimants over many years but some genuine ones. I always in such cases direct myself to be wary of cynicism. The first issue today is whether I accept the lost in the post argument. The claimant urges me not to believe the respondent but accepts that if I do, revocation of the judgment should follow.

5. I heard the sworn evidence of Mr Sam Wilson. He filled in the response form on 14th December. He was at another of the respondent’s premises on Friday 15th in Keighley. On his way back, knowing there may be delays in the Christmas post, that the form was important and he would not be able to post it from his base in Sunderland until Monday 18th, he stopped at a post box in the village of East Morton and posted it. The envelope had a first class stamp. He had kept a photocopy of the form for his records and it is a copy of that which Hay & Kilner enclosed with their letter of 12th January.

6. Employment Tribunals send to every respondent detailed explanations of what they must do, when and the consequences of not complying. Although a respondent knowledgeable about Tribunal procedures would have expected an acknowledgement of response letter, many respondents do not. For such respondents, the first they would know of a response going astray would be receipt of the Rule 21 judgment on liability. The only ground for a reconsideration is whether one is necessary in the interests of justice. Noting the detail of Mr Wilson’s evidence, on balance of probability I accept what he says. The only ground for a reconsideration is whether one is necessary in the interests of justice. As I believe the response was sent it is in the interests of justice to revoke a judgment made without a party having had the opportunity to be heard.

TM Garnon Employment Judge
Date signed 29th January 2018.