



EMPLOYMENT TRIBUNALS

Claimant

Mr P Atherton

and

Respondent

Carlton Professional Limited

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Claimant's application for reconsideration is allowed and the Judgment of 11 April 2019 is revoked and the Judgment of 2 January 2019 replaced in substitution.

REASONS

1. The Claimant has applied for a reconsideration of the Judgment dated 11 April 2019 which was sent to the parties on 12 April 2019. The grounds are set out in his application of 15 April 2019.
2. The Judgment of 2 January 2019 was entered in default of the Respondent entering a response on time under rule 21. It reflected the Claimant's claim for unpaid holiday pay and compensation for the alleged failure to provide written particulars of employment. A further 4 weeks' pay was awarded under section 38 of the Employment Act 2002 in that respect, bringing the total to £2,513.62.
3. By an email dated 10 January 2019, the Respondent sought reconsideration of the original Judgment. The Tribunal encouraged Mr Woodhead, the Managing Director of the Respondent, to file a response and apply for an extension of time.
4. Following receipt of the draft Response, the Tribunal indicated that the Judgment could have been reconsidered for the amount offered by Mr Woodhead if it was accepted by the Claimant, being the full value of the claim for outstanding holiday pay or an ACAS settlement could have been achieved.

5. Further emails were received from Mr Woodhead confirming his desire to follow the former course, but nothing was received from the Claimant. The assumption was therefore made that he was content for the course which had been proposed; for judgment to be reconsidered for the reduced amount of £1,774.32.
6. Somewhat belatedly, on 15 April, the Claimant wrote to the Tribunal requesting that the original Judgment be reinstated. He stated that the Respondent had misled him, ACAS and the Tribunal and that there had been no agreement reached between him and Mr Woodhead as the Judge had assumed (see the Tribunal's letter of 30 March).
7. It now being clear that the Claimant has not been complicit in any proposed agreement to accept a lower sum than that initially awarded, the former position should be reinstated. The original Judgment of 2 January 2019 stands.
8. For the avoidance of doubt, the Respondent failed to provide a good reason why the original Judgment ought to have been reconsidered other than the matters set out above. Once he had made the initial application for reconsideration on 10 January 2019, he was advised to enter a draft response with a full explanation for the delay within 7 days (the Tribunal's email of 20 February). He did not do so. Despite a reminder which was sent on 9 March, the draft Response was not sent until 18 March and it failed to deal with the failure to supply written terms of employment. The Respondent assumed that the increase under s. 38 had been some form of penalty for his 'non-response' despite the Tribunal having explained otherwise.

Employment Judge Livesey
Dated: 17 April 2019