



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Barker

**Respondents:** Activ Red Limited (R1)  
Activ Staffing and Support Ltd (R2)

**Heard at:** Lincoln                      **On:** Monday 29 April 2019

**Before:** Employment Judge Hutchinson (sitting alone)

## Representation

**Claimant:** Tony Barker, Father

**Respondent:** Mr Ryan of Counsel

# RECONSIDERATION JUDGMENT

The Employment Judge gave judgment as follows: -

1. The default judgment dated 23 November 2018 and sent to the parties on 29 November 2018 is hereby revoked.
2. Activ Staffing and Support Limited are joined as a second Respondent.

# REASONS

## Background to this Hearing

1. The Claimant presented his claim to the Tribunal on 18 July 2018. In his claim form he named the Respondent as Matthew Clark/Activ Red Limited and said that he had worked at the Loaded Night Club in Spalding as a Barman between 15 September 2015 and 23 February 2018.
2. He claimed non- payment of wages. He said that he was due Statutory Sick pay, holiday pay and non payment of shift pay.
3. The claim was accepted and served upon Activ Red Limited with a hearing date of 17 December 2018. A response needed to be filed by 24 August 2018.
4. No response was received and the Claimant was written to, to request details of the amount he was claiming.

5. On 5 September 2018 the Tribunal received a letter from Activ Red Limited dated 23 August 2018. The ET1 and other documents were returned and the letter said:

“I am returning the attached documents which relate to an ACAS claim by a Richard Barker.

The documents have not been completed as this person is not and has not been employed by Activ Red Limited.

I trust this is satisfactory and you will amend your records accordingly.”

The letter was not accompanied by a completed ET3 form.

6. Having obtained details of the amounts claimed from the Claimant on 29 October 2018 I issued a default judgment in the sum of £3,185.05 on 23 November 2018. This judgment was sent to the parties on 29 November 2018.

7. On 12 December 2018 the Tribunal received a letter from solicitors acting for Activ Red Limited. They asked for the judgment to be revoked saying that the Respondent had provided a response in a letter that was posted within the time frame. They applied for the Tribunal to extend the time and allow the response to be accepted. My colleague Regional Employment Judge Swann determined that there should be a reconsideration hearing.

8. At the hearing today, I heard from Moira Clark, a Director of Activ Staffing and Support Limited. She explained that the Claimant had been employed by that company as a General Assistant. Within the bundle of documents at page 61-3 there was a contract of employment which indicated that the Claimant was employed by Activ Staffing and Support Limited. She also produced wage slips (page 64) which again support the contention that the Claimant was not employed by Activ Red Limited but was employed by Active Staffing and Support Limited.

## **The Law**

9. Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the regulations) provide:

“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.”

## **My Conclusions**

10. Whilst there is some doubt as to whether the Respondent did attempt to file an ET3 prior to the deadline date of 24 August 2018 I am satisfied that it is in the interests of justice for the decision to be revoked.

11. On the face of the documentation produced to me today it would appear that the Claimant was not employed by the Respondent but by Activ Staffing and Support Limited.

12. The matter should be considered at a hearing where both parties can give evidence, the correct employer can be determined and upon hearing the parties a determination can be made as to how much if anything is owed to the Claimant.

### **Listing a Hearing**

13. The claim will be heard by an Employment Judge sitting alone at the **Magistrates Court, 358 High Street, Lincoln LN5 7QA on Wednesday 28 August 2019** at 10:00 am or as soon as possible on that day as the Tribunal can hear it. The hearing has been allocated one day.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

#### **1. Amended response/Further information**

1.1 The Respondent, Activ Staffing and Support Limited are ordered to file their response to the claim by **20 May 2019**.

#### **2. Disclosure of documents**

2.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **3 June 2019**. This includes, from the Claimant, documents relevant to all aspects of any remedy sought.

2.2 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

2.3 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

#### **3. Bundle of documents**

3.1 It is ordered that the Respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.

3.2 To this end, the Claimant is ordered to notify the Respondent on or before **10 June 2019** of the documents to be included in the bundle at their request. These must be documents to which they intend to refer, either by evidence in chief or by cross-examining the Respondent's witnesses, during the course of the hearing.

3.3 The Respondent is ordered to provide to the Claimant a full, indexed, page numbered bundle to arrive on or before **17 June 2019**.

3.4 The Respondent is ordered to bring 2 copies to the Tribunal for use at the hearing, by 9:30 am on the morning of the hearing.

#### **4. Witness statements**

- 4.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 4.2 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.
- 4.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 4.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 4.5 It is ordered that witness statements are exchanged so as to arrive on or before **8 July 2019**.
- 4.6 The parties are ordered to bring 2 copies to the Tribunal for at the hearing by 9:30 am on the morning of the hearing.

### CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

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Employment Judge Hutchinson

Date 10 May 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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