



EMPLOYMENT TRIBUNALS

Claimant : Miss K Renshaw

Respondent : Ila Gamble

DECISION ON RECONSIDERATION Rules 70-73 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

The Judgment sent to the parties on 29 November 2018 is varied as follows: The amount that the respondent is ordered to pay to the claimant is reduced to £779.88.

Reasons

Background

1. By claim form presented on 14 August 2018 the claimant brought a claim against the respondent for unpaid holiday pay.
2. The claim form was sent to the respondent by letter dated 10 September 2018 in which the respondent was informed that if it wished to defend the claim, its response must be received at the Tribunal office by 8 October 2018.
3. The respondent did not submit a response, nor any application for an extension of time in which to do so.
4. The respondent has still not filed a response to the claim nor any application for an extension of time in which to do so.
5. On 28 November 2018 I entered Judgment in default against the respondent pursuant to Rule 21 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. I ordered the respondent to pay to the claimant the sum of £912.72 in respect of unpaid holiday pay, that being the sum claimed by the claimant in the claim form.
6. The Judgment was sent to the parties on 29 November 2018.
7. By letter dated 7 January 2019, and received by the Tribunal on 9 January

2019, the respondent indicated that she wished to dispute the amount of the award to the claimant.

8. On 14 January 2019 a letter was sent to the respondent by the Tribunal in which the respondent was informed that if she was asking for the Default Judgment to be reconsidered, she would need to set out clearly why it is in the interests of justice to do so, and given that any application for reconsideration should have been made within 14 days of the date that the Judgment was sent to the parties, that she would also need to explain why her application was late and request an extension of time for it to be considered.
9. The respondent replied in an email of 28 January in which she indicated that she had serious health conditions, had experienced the death of a family member and her business had been in financial difficulties. She also set out what she considers the claimant is entitled to by way of holiday pay – a sum significantly lower than that set out in the judgment. The respondent did not however state in her email why it was in the interests of justice to reconsider the judgment, or request an extension of time for her application for reconsideration to be considered.
10. The claimant was asked to comment on the respondent's email of 28 January and did so in an email that she sent to the Tribunal on 11 February 2019. In that email the claimant accepted that she was not entitled to holiday pay in relation to 3 days' holiday she had taken over the Christmas period, and she subsequently confirmed (in an email sent to the Tribunal) on 5 April 2019) that the value of the 3 days' holiday she had taken was £132.84. Otherwise, the claimant does not accept the holiday pay figures provided by the respondent and described the other holiday dates provided by the respondent as "made up".
11. On 19 March the Tribunal wrote to the respondent giving her a further opportunity to send in any medical evidence that she wished to rely upon in support of her contention that her health caused or contributed to the delay in applying for reconsideration, and to do so within 14 days. No further communication was received by the Tribunal within the 14 day period.
12. Accordingly, on 5 April 2019 the Tribunal wrote to both parties informing them that I was proposing to reconsider the Judgment of my own initiative to reduce the amount of the award by 3 days' pay, in light of the fact that both parties appear to agree that the claimant is not entitled to 3 days' holiday pay for the Christmas period. The parties were also informed that I was proposing to deal with the reconsideration without a hearing and invited them to make any comments and representations within 14 days.
13. The claimant was asked whether she agreed that the figure of £132.84 is the correct amount for 3 days' holiday pay, and subsequently did so.
14. In the Tribunal's email of 5 April, the parties were also informed that I had decided that it would not be in the interests of justice for time to be extended for the respondent's reconsideration application.
15. On 8 April the respondent replied to the Tribunal's email indicating that she had sent emails on 29 March giving a list of her disabilities and copies of her prescriptions for her medications. She forwarded an email that

appeared to have been sent by the respondent to an email address etpenalties@beis.gov.uk on the 29 March.

The relevant law

16. Schedule 1 of the Employment Tribunals (Constitution & rules of Procedure) Regulations 2013 provide as follows:-

Rule 70 Principles

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.

Rule 71 Application

...an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication of the original decision was sent to the parties...and shall set out why reconsideration of the original decision is necessary.

Rule 72 Process

- (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked...the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing...*
- (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

17. The only ground upon which a judgment can now be reconsidered is ‘the interests of justice’. In considering whether it is in the interests of justice to reconsider a judgment, a Tribunal must take account of the overriding objective of dealing with cases fairly and justly. This includes ensuring that the parties are on an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in proceedings, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense.

18. In Outasight VB Ltd v Brown [2015] ICR D11, a decision of the Employment Appeal Tribunal, Her Honour Judge Eady accepted that the test of ‘necessary in the interests of justice’ gives the Employment Tribunal a broad discretion to consider whether reconsideration is necessary in the circumstances. However, the discretion must be exercised judicially, which involves having regards to the interests of both parties and to the public interest in the finality of litigation.

Conclusions

19. I have reconsidered the original judgment on my own initiative. In reconsidering the judgment, I have taken account of the respondent's letter dated 7 January 2019, and her emails dated 28 January and 8 April 2019.
20. My overriding consideration in reaching my decision is what would be in the interests of justice.
21. The first time the respondent made any contact at all with the Tribunal in relation to this claim was on 9th January, some 3 months after the Response should have been filed, and more than 5 weeks after the Judgment was sent to the parties.
22. The respondent has delayed significantly in responding to these proceedings. There is no suggestion by the respondent that she did not receive the original claim form, but rather the respondent suggests that she misunderstood what she was required to do in response to the claim form, and that she was unwell at the time.
23. In contrast, the claimant, who is also a litigant in person, has acted promptly at all times. She has also, in my view, acted most reasonably by accepting that she had overstated her claim by 3 days' pay.
24. The interests of justice require a finality to the litigation. They also require that I take account of the interests of the claimant as well as of the respondent. The claimant presented her claim to the Tribunal on 14 August 2018 and, even now, no Response has been filed by the respondent. If the judgment were to be revoked, there would be a significant delay in concluding these proceedings as the respondent would then have to apply for leave to file a response out of time, and there may then need to be a hearing. It will be months before this claim is concluded.
25. On balance, I do not consider that it would be in the interests of justice to revoke the original judgment or to reduce the award to the amount that the respondent suggests it owes the claimant.
26. It would however, in my view, it would be in the interests of justice to reduce the amount awarded to the claimant by the 3 days' holiday pay (£132.84) that the claimant accepts that she is not entitled to.
27. For these reasons the judgment sent to the parties on 29 November 2018 is varied to reduce the amount that the respondent is ordered to pay to the claimant to £779.88.

Employment Judge Ayre

Date 23 May 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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