



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss D Nicholson

**Respondent:** Bootlegger Cleethorpes Limited

**Heard at:** Lincoln **On:** Thursday 25 July 2019

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

## Representatives

**Claimant:** No Appearance

**Respondent:** Mr Green, Operations Director

# JUDGMENT

The Employment Judge gave judgment as follows: -

1. The judgment of 1 July 2019 which was sent to the parties on 4 July 2019 is hereby revoked.
2. The Respondent's application for extension of time to lodge the ET3 is granted.
3. The ET3 is accepted.

# REASONS

## Background to this Hearing

1. The Claimant presented her claim to the Tribunal on 24 January 2019. She was employed by the Respondents as a barmaid from 29 January 2018 to 10 December 2018.
2. She claimed: -
  - Automatic unfair dismissal
  - Pregnancy discrimination
  - Holiday pay
3. In her claim form she said that she was working at the Bootlegger nightclub in Cleethorpes part time and was 25 weeks pregnant when she had to have a shift off because of issues with her pregnancy.

She said that she was dismissed by the manager because she had that shift off and it amounted to a dismissal because of her pregnancy which is automatically unfair and also amounted to discrimination on grounds of her pregnancy. She also said that she had not been paid her holiday pay and that she was entitled to notice pay.

4. The claim was served on the Respondents on 27 April 2019. The Claimant had given as the Respondent's address 30-34 High Street, Cleethorpes DN35 8JN. An ET3 should have been received by the Tribunal by 25 May 2019.

5. The Tribunal did not receive an ET3 and a judgment was issued by my colleague Employment Judge Britton and sent to the parties on 4 July 2019.

6. A hearing was listed today was to determine remedy.

7. On 10 July 2019 the Tribunal was contacted by Nick Grace from the Accounts Department of Unity Bars and Clubs Limited to say that they had just been made aware of the upcoming case and they needed information about it.

8. The Tribunal wrote to Mr Grace on 11 July 2019 sending him details of the claim.

9. On 12 July 2019 Mr Green wrote to the Tribunal to say that they had only just become aware of the claim because the correspondence was sent to the incorrect registered address. He provided details of the registered office of the company which is 10 Cliff Parade Wakefield West Yorkshire WF1 2TA.

10. Employment Judge Britton reviewed that correspondence and directed the Respondent to provide a signed statement as to how they came to know about the claim and that they should complete a defence as part of the application and bring these to the hearing on 25 July 2019 which remained listed. I am to determine today whether to revoke the judgment issued on 4 July 2019 and whether to grant the Respondent's application to extend time to file an ET 3 and whether to accept the ET 3.

### **The Hearing Today**

11. The Claimant did not attend the hearing. I waited 20 minutes and then my usher telephoned the Claimant to be told that she would not be attending the hearing today. She said that she thought the hearing was next year.

12. I was satisfied though that the Claimant was aware of the hearing today and the purpose of it and that I should proceed which was in accordance with the overriding objective.

### **Evidence**

13. I heard evidence from Mr Green. He is the Operations Director of Unity Bars and Clubs Limited which is a holding company that operates bars and clubs in Yorkshire, Nottinghamshire and Lincolnshire. He told me the Claimant was employed at Bootlegger Cleethorpes and was employed by Bootlegger Cleethorpes Limited.

14. He confirmed that until 11 July 2019 they did not know about these

proceedings. The premises that the claim form was sent to is a late-night operating bar and does not have a post box and does not therefore receive mail and it is not operated at or occupied during normal business hours.

15. The registered office for the company is 10 Cliff Parade, Wakefield WF1 2TA.

16. He also produced to me an ET3 which disclosed a triable defence. In it they say that they did not dismiss the claimant. She did not attend her shift on 8 December 2018 or the following week on 15 December 2018 and they tried to contact her several times over the telephone. Because she had not turned up for work and failed to respond to their messages they issued her with a P 45. When she contacted the Respondents on 2 January 2019 they said to her that there had been a misunderstanding and that she would be reinstated into their employment and continue her service. The Claimant did not wish to return unless she was paid for the shifts that she had missed.

### **My Conclusions**

17. I am satisfied that the Respondents were not aware of the proceedings until 11 July 2019 and they acted promptly once they became aware of the proceedings.

18. I am satisfied with Mr Green's explanation and that they do have a valid defence to the claim.

19. I am also satisfied that it would cause substantial prejudice to the Respondent if they were not allowed to defend the claim and whilst there is some prejudice to the Claimant who has a judgment, that is outweighed by the prejudice to the Respondent.

20. In the circumstances I am satisfied that it is just and equitable to revoke the judgment sent to the parties on 4 July 2019. I grant the Respondent's application for an extension of time to defend the claim and I accept their ET3.

---

Employment Judge Hutchinson

Date 8 August 2019

JUDGMENT SENT TO THE PARTIES ON

.....  
.....  
FOR THE TRIBUNAL OFFICE