Case No: 1811404/2018

EMPLOYMENT TRIBUNALS

Claimant: Miss J Hawkins

Respondent: Mr John Lingard

JUDGMENT

The respondent's application dated **6th September 2019** for reconsideration of the judgment sent to the parties on **27th August 2019** is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because

1. The Response was struck out on 17th July 2019 and that Judgment of Employment Judge Rostant was sent to the parties on 19th July 2019.

2. It was posted to the address 19 Grime Lane, Sharlston, Wakefield, West Yorkshire,WF4 1EJ. That was also the address given for the Respondent on the Claim Form and the Respondent had earlier replied to Tribunal correspondence sent there on 14th February 2019.

3. Although there is an error in the form of that strike-out Judgment I do not consider it to be material. The error arises because it also names a second and a third Respondent (Mr John Lingard c/o Sharlston Rovers ARLFC and Ms S Davies c/o Sharlston Rovers ARLFC) whereas the Claim had only ever been re-sent to those alternative addresses and not actually re-served on any other party. Mr Lingard had, however, consistently been identified by the Claimant as the person she believes to have been her employer, he had remained as a named Respondent throughout and his Response (albeit one that was submitted in the name of Sharlston Rovers ARLFC) was expressly struck out.

4. Although there has been correspondence attempting to clarify the identity of the employer, the title of the Respondent has never been amended to Sharlston

Rovers ARLFC. It was, in fact, because neither Mr Lingard nor his accountant (who had corresponded with the Tribunal ostensibly on his behalf) ever replied to specific requests from the Tribunal for information about the constitution of the rugby club that the strike out warning letter was sent on 23rd May 2019 which, in the absence of any response, led to the Judgment of 17th July 2019.

5. On 28th August 2019 the Repondent, Mr Lingard, telephoned the Tribunal, after receipt of my final Judgment sent out the previous day, and stated that having received the earlier decision he believed that the case had been struck out rather than his Response

6. The address used by Mr Lingard on the Response Form and in his own correspondence and that which was used for the final Judgment is slightly different (Lilac House, Grime Lane, Sharlston, Wakefield, West Yorkshire,WF4 1EJ) but he has received communications at both.

7. There has never been any application to reconsider nor any appeal against the strike-out Judgement, which the Respondent accepts that he did receive.

8. Therefore the Respondent, had he attended on 23rd August 2019, would only have been entitled to participate in the final hearing to the extent that I allowed him to do so: Employment Tribunals Rules of Procedure 2013, rule 21 (3). There was also no valid Response before the Tribunal at that time; rule 37 (3)

9. At the hearing on 23rd August 2019 I made a finding of fact that the Claimant was employed by Mr Lingard personally and that he therefore was the correct Respondent to this claim.

10. That finding was made having heard, and accepted, the evidence of the Claimant. That was that all her dealings were with Mr Lingard personally and that she took no instructions in her employment from the committee members of the rugby club whose pitches and changing facilities were at a separate address. I also accepted her evidence that the finances of the bar in the former Working Men's Club (including staff wages) were handled exclusively by Mr Lingard and were quite separate from any actual income of the rugby club (whether by way of subscriptions, match fees or fundraising events). Even though the club may have been run nominally under the auspices of Sharlston Rovers ARLFC I was satisfied on the evidence that that was, in this context, simply a vehicle for Mr Lingard and did not in fact indicate any independent control of the business or the Claimant by the unincorporated association.

11. That view is entirely corroborated by the documentary evidence , in fact supplied by the Respondent, with regards to the termination of the Claimant's employment. In letters dated 28th August 2018 and after 6th November 2018 (both to the Claimant) and then on 6th February 2019, to the Tribunal. The Respondent refers repeatedly to him personally having purported to withhold monies from the Claimant's final wages in respect of alleged damage to the property that she rented from him in the same building and for unpaid rent. The Respondent drew no distinction between moneys payable to the Claimant by her employer and moneys due to him as her private landlord. The clear inference is that he as an individual was in fact employing the Claimant and paying her wages and renting to her the connected living accommodation.

12. Incidentally as The Respondent now accepts that the withholding of the moneys from wages was unauthorised there can be no possible defence to that part of the claim.

13. The Respondent personally dismissed the Claimant without any reference to the

rugby club because he wanted the residential property for his daughter-in-law (Ms Davies) who was to begin managing his affairs and whom he therefore appears to have appointed (again without any reference to the rugby club) to manage the bar in place of the Claimant. In the letter of 28th August 2018, and in the Response (ET3) the Respondent expressly stated that he was passing the business (sc the bar/club) to his daughter-in-law. In a subsequent letter of 25th February 2019 he resiled from this position, denying that there had been any transfer of business to Ms Davies but the contemporaneous documentation clearly shows that he alone was exercising control over employment in the bar/club.

14. It is not sufficient, in the light of the evidence to the contrary, merely for the Respondent to assert that he was not the employer and obtain any form of re-hearing on that ground alone.

15. As far as the substantive claim of unfair dismissal is concerned, even within the rejected Response there is no potentially fair reason for dismissal advanced. On review of this Response I expressed the opinion in a letter of 14th February 2019 that this appeared to be a dismissal because of a transfer of undertaking but might nonetheless be fair if it was for an economic , technical or organisational reason such as redundancy (the replacement of the Claimant as an employee by the new owner of the business), in which case she would however be entitled to a redundancy payment. In his reply to that letter the Respondent however expressly excluded that possibility, stating that there was no transfer of the business to Ms Davies, and so leaving no identifiable fair reason for termination. On the face of it Mr Lingard simply decided, purportedly on behalf of a third party, the rugby club, to replace the Claimant with another employee

16. In these circumstances, absent any fair reason to be shown by the Respondent, the claim of unfair dismissal must succeed.

17. Therefore, even if it were correct that the Respondent had not received the Notice of Hearing sent on 25th July 2019 he would have had no absolute right to take part and the evidence before me would have been, and on any re-hearing will be the same. He, or his agent the accountant, is culpable for not replying to Tribunal correspondence and the misinterpretation of the strike-out judgment is entirely his own responsibility. In these circumstances, even though the decision was taken in the absence of a party, I do not consider it to be in the interests of justice to reconsider this judgment; there is no reasonable prospect of my finding of fact being revoked. The Claimant is entitled, also in the interests of justice, to finality in legal proceedings.

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Employment Judge **Lancaster**

Date 10th September 2019

JUDGMENT SENT TO THE PARTIES ON

12 September 2019