Case No: 1400430/2019

EMPLOYMENT TRIBUNALS

Claimant: **Mr T Drimusch**

Respondent: **Mrs B Holland T/A Angel and Station Restaurant**

Heard at: **Plymouth** **On: 9 September 2019**

Before: **Employment Judge Fowell**

Representation:

Claimant: Mr N Moore, instructed by Woollens

Respondent: In person

JUDGMENT ON RECONSIDERATION

1. Mr Drimusch submitted a claim form on 9 February 2019 following his resignation from employment at the Angel and Station restaurant. He had worked there for four years carrying out maintenance and had already obtained other employment. He left on bad terms however and brought claims for holiday pay and other payments. Claim form also made reference to being treated "with a poor attitude because of my nationality."

2. No response was made to the claim. On 4 March 2019 the Tribunal wrote to the claimant asking him to provide further details of his claim of racist comments if he wished to pursue a claim of race discrimination. Some further details were provided by email on 16 March 2019, ending with a comment that he was treated like a slave while he worked there.

3. In the absence of any response whatever from the respondent, a judgment under rule 21 was then issued on 11 April, for discrimination on grounds of race, unlawful deduction from wages and accrued but unpaid holiday.

4. On 24 May 2019 an email was received from a Sue Marels, HR Manager for the what she described as the Holland Group. The heading refers to the Employment Tribunal and the case number, indicating that she had either received the claim form or other correspondence from the Tribunal or ACAS, but in any event it is clear from the contents that she was aware of the substance of the claim. In this email she explained that the company had been going through some turmoil, involving an investigation and the suspension of two members of staff. She said that he had never raised any complaints with her, that timesheets were kept and that in fact he had taken more holiday than

he was entitled to, that he had come to her on resigning and demanded a P45 and then complained to her aggressively about damp in the flat which he rented from them.

5. The Tribunal emailed her on 15 June 2019, at the direction of EJ Goraj, explaining that the respondent would need to make an application for reconsideration and to supply a draft response. No such response was received.

6. Instead, on 12 July 2019 Woollens, now solicitors for the respondent, emailed the Tribunal to explain:

   (a) that Mrs Holland took over this business and others on the death of her husband;

   (b) that she lost mental capacity in September 2017 and that Mr Hillary Bastone was appointed as her guardian by the Office of the Public Guardian on October 2018;

   (c) that the businesses were in practice then run by an Operations Manager called Angela Tracy, a relative of Mrs Hollins, but were so badly run that she was suspended and eventually dismissed on 13 May 2019;

   (d) that day-to-day business was then taken over by Ms Morel and another manager;

   (e) that sometime before 24 May 2019 (the date of her email) Ms Morel was contacted by ACAS about the claim and (on enquiry) had also received the email from the Tribunal dated 15 June 2019

   (f) that Ms Morel too was now in her notice period too; and

   (g) asking for a copy of the claim form.

7. A copy of the claim form was provided. Again however, this elicited no response and remedy hearing went ahead on 3 July 2019, on notice to the respondent. At that hearing compensation was awarded to the claimant for his various complaints. It was sent to the parties on 24 July. That same day Woollens made a formal application by letter for reconsideration of the original judgment, reiterating the background history and points made in their earlier email. According to this, there were first aware of the Tribunal claim when the claimant attended their offices on 11 July with a copy of the judgment.

8. That, therefore, is the background to this application. It follows that although Mrs Holland lacks mental capacity, that fact played little or no part in the events that followed. Although the business is in her name, a Guardian was appointed long before these proceedings commenced. (If these proceedings had continued Mr Bastone could have been appointed litigation friend but that is not now necessary).

9. It is unfortunate from her point of view that no more active steps were made at that stage to appoint competent managers. Mr Mark Readman has now been appointed and attended the Tribunal today but all of the failings in responding to the Tribunal correspondence and Judgment are, it seems to me, attributable to those failures to have in place an effective system for dealing with correspondence.

10. Mr Moore put the claim for the respondent with exemplary fairness, pointing out some of the difficulties which would normally be raised against an application of this sort, principally the delay on behalf of the company, the fact that it ignored both the claim form, judgment and remedy hearing, and that the application for reconsideration is itself out of time. There is also the fact that the interests of justice involves finality of litigation. He submitted however that this was not a decisive factor considered against the prejudice to the respondent. He also made the point that the Judgment of 3 July 2019 includes race discrimination, which is a serious matter for any employer, and there is a public interest in hearing such claims. He reminds me that when a claimant brings a complaint of discrimination which is lacking in detail it is very difficult for an employer to justify striking out such a claim because of that public importance in having such allegations resolved fairly between the parties.

11. The situation is not however directly comparable. Here, the employer had a full opportunity of responding to those allegations and has simply failed to do so. The nature of the complaint was known by Ms Morel at least, a responsible manager, from the outset and there is no suggestion that any of the tribunal's correspondence has not been received. It does not seem to me that the nature of the complaints make any real difference to the balance which I have to strike in an application of this sort.

12. There is no explanation for the delay or oversight in failing to deal with these matters and the finality of litigation is a point which carries a good deal of force in the circumstances.

13. Nor is there a clear defence to any of the complaints. The Tribunal's email of 15 June 2019 advised Ms Morel that a response form should be completed to accompany any application for reconsideration. No such response form has been completed. There is only a one-page draft Grounds of Resistance denying the various allegations and saying that they need to be particularised.

14. I have had regard to the witness statement of Mr Readman dated 6 September 2019. This effectively encapsulates the information provided by the respondent's solicitors in previous correspondence and adds at the end the additional information that on 3 September 2019, whilst tidying the office, he found correspondence from the Tribunal which had been opened but not filed, together with a copy of the staff handbook. The existence of such a handbook is not in itself a viable defence to the claim, and the fact that tribunal correspondence has been received but not attended to, despite sitting in the office for so many months, encapsulates the position very clearly. Ultimately it is not acceptable for any employer, however chaotic their management organisation, to ignore Tribunal correspondence over so many months and then expect to have the opportunity to respond to the claim.

15. As with every such application it has to be decided in accordance with the overriding objective of dealing with cases justly and fairly. The practice of issuing default judgements when a party fails to respond is not incompatible with that duty of fairness, and is subject to the right to apply for reconsideration. Even that right has time limits, and also requires that something has gone significantly amiss, such as to deprive the respondent of a reasonable opportunity to respond to the claim. Here, the problems are of its own making. There is no question that the rule 21 judgement was properly issued and the

evidence presented with the application does not suggest that any exceptional circumstances exist such that the interests of justice now require that judgment be set aside. I therefore dismiss the application.

Employment Judge Fowell

Date 9 September 2019

Judgment and reasons sent to parties on: 25 September 2019

FOR THE TRIBUNAL OFFICE