



EMPLOYMENT TRIBUNALS

Claimant

Miss A Richards

and

Respondent

The Rabbit Hole Bristol Ltd.

Heard at: Bristol

On: 6 November 2019

Before: Employment Judge Livesey

Appearances

For the Claimant: In person, supported by a representative from Support Through Court

For the Respondent: Miss Joseph-Monteith, owner of the Respondent

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The Respondent's application for reconsideration is granted and the Judgment of 8 August 2019 is revoked.
2. The Claimant's claims of unfair dismissal and for a redundancy payment are both dismissed upon withdrawal.
3. The Claim now proceeds in accordance with the Case Management Summary and Order of even date.

REASONS

Background

1. The Claimant issued a claim on 29 April 2019. It was served by the Tribunal on the address provided by the Claimant (7 Ashley Road, Bristol BS6 7NH) and the Respondent was required to file its response by 28 May.
2. No response was filed and a Judgment was issued in default on 6 June. It was sent to the address referred to in paragraph 1 above but was returned by Royal Mail with the message '*address inaccessible*'.

3. A search of Companies House website revealed that the Respondent's Registered Office was elsewhere; Boyce's Building, 40-42 Regent Street, Clifton, Bristol BS8 4HU. The Judgment of 6 June was then reconsidered and set aside and the Claim Form was served on the Clifton address on 24 June.
4. Again, no response was entered and a second judgment was signed on 8 August in the Claimant's favour. The issue of remedy was to have been resolved today.
5. On 30 August, an email was received from Miss Joseph-Monteith. She claimed that she had only become aware of the claim after ACAS had asked why she had not responded to it. She stated that she had never received any emails or letters and that she did not understand why the Tribunal had not used her email address when ACAS had.
6. Together with her email of 30 August, Miss Joseph-Monteith enclosed a draft Response in which the Claimant's claims were denied in full. The draft raised serious allegations about the nature of the claim, including that the Claimant had prepared and forged a contract of employment in her favour.
7. Employment Judge Midgley considered that it was implicit within the Respondent's email that it was seeking to have the Judgment of 8 August reconsidered under rules 70 to 72 and time extended within which the Response should have been accepted under rule 20. He therefore changed the nature of this hearing; if the application for reconsideration succeeded, the claim would be case managed and listed. If the application failed, the issue of remedy would be determined.

Principles in relation to reconsideration

8. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contained the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under rule 71, an application for reconsideration under rule 70 had to be made within 14 days of the date on which the decision was sent to the parties. The Judgment of 8 August was sent to the parties on the 16th and the application of the 30th was therefore received inside the relevant time limit.
9. The grounds for reconsideration were only those set out within rule 70, namely that it was necessary in the interests of justice to have done so. The earlier case law suggested that the test should have been construed restrictively, but more recent case law suggested otherwise since the introduction of the overriding objective (which was contained within rule 2), in order to ensure that cases were dealt with fairly and justly. As confirmed in *Williams-v-Ferrosan Ltd* [2004] IRLR 607 EAT, it was no longer the case that

the 'interests of justice' ground was only appropriate in exceptional circumstances.

10. Rule 20 enabled a respondent to apply for an extension of time for presenting a response. Applications ought to set out the reason why the extension was sought and be accompanied by a draft, as it was in this case.

Argument

11. The Respondent asserted that the address at 7 Ashely Road had no post box, which the Claimant well knew. Service at that address would have been impossible.
12. Miss Joseph-Monteith, however, accepted that the 40-42 Regent Street was the Respondent's Registered Office although she explained that she provided that address upon the Company's registration but that she did not pay to have it used as a forwarding address. She has arranged for post to come to her home address (14 Bellevue, Clifton, Bristol BS8 1DB).
13. The Claimant argued that Miss Joseph-Monteith knowingly used the address at 40-42 Regent Street knowingly to delay and hide from creditors, including her. She maintained that the contract and other documents produced by her at the hearing had all been signed by her.

Conclusions

14. The application for reconsideration pursuant to rule 72 (1) was granted because it was in the interests of justice to do so; there were good reasons why the Respondent had not responded to the claim and, in light of its draft response, it would have been wholly wrong to have shut it out from arguing its defence to the complaints.
15. The Respondent clearly needed to address the position regarding the address of its Registered Office if 40-42 Regent Street was not being used as such. Nevertheless, Miss Joseph-Monteith has played an active part in the proceedings since she became aware of the Judgment and wrote to the Tribunal on 30 August. The very significant factual dispute which exists between the parties deserved to be heard and the Judgment was set aside. The case will now proceed in accordance with the Case Management Summary and Order of even date.

Employment Judge Livesey
Dated 6 November 2019