



EMPLOYMENT TRIBUNALS

Claimant: Mr P Beri

Respondent: Everyman Motor Racing Activities Limited

Heard at: Nottingham **On:** Wednesday 11 December 2019

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: Ms Crew of Counsel

Respondent: Mr S Swanson, Consultant

JUDGMENT

The judgment of the Employment Tribunal Judge is that: -

The application for reconsideration of the judgment sent to the parties on 13 August 2019 fails and is dismissed.

REASONS

The claim

1. The Claimant presented his claim to the Tribunal on 7 June 2019. He said he was employed by the Respondents from 16 January 2019 until 19 March 2019 at the Respondent's driving centre at Prestwold Lane, Prestwold, Loughborough LE12 5SH when he left the Respondent's employment by agreement. He had been employed as Sales Call Centre Manager.

2. His claims were of: -

- Notice pay
- Holiday pay
- Wages

3. In the particulars of claim he explained that he had: -

3.1 Not been paid for 19 days he worked between 21 February 2019 and 19 March 2019. That he was owed £2,923.15 in wages.

3.2 During the period of employment he had accrued 39 hours and 53 minutes of holiday entitlement which he rounded to 40 hours and that this amounted to £746.00.

3.3 Not been provided with a written contract of employment and that he should be entitled to a declaration in respect of that, together with compensation.

4. He was not claiming notice pay because he had left by mutual agreement.

Events leading to summary judgment

5. The claim was served on the Respondents by letter sent to their address at Prestwold, Loughborough on 1 July 2019. That informed the parties that there would be a hearing of the case on Friday 4 October 2019 and case management orders were made. The Respondent were told that if they wished to defend the claim their response must be received by 29 July 2019.

6. On 1 August 2019 the Tribunal received a schedule of loss from the Claimant's representative.

7. A company search was undertaken by the Tribunal and that revealed that the registered office address at Companies House was the address upon which the documents had been served.

8. The letter enclosing the claim form and other documents was not returned by the Royal Mail.

9. On 8 August 2019 I signed a judgment issued under Rule 21 of the Employment Tribunals Rules of Procedure 2013 ("the rules"). I gave judgment in respect to the following sums: -

9.1 Unlawful deduction of wages in the sum of £2,923.15.

9.2 Holiday pay in the sum of £746.00.

9.3 Failure to provide a written statement of initial particulars of employment in the sum of £2,032.00.

10. I cancelled the hearing on 4 October 2019 and the judgment was sent to the parties on 13 August 2019.

Contact from the Respondent

11. On 10 September 2019 the Tribunal received a reconsideration request from Kayleigh Wilkinson, Office Manager of the Respondent company. The e-mail said:

"I believe you may have been given the incorrect correspondence address.

Could we please have all documents in relation to these cases e-mailed over to us on this address please.

In the case of postal documentation could it please be sent to our registered address as below:

Everyman Motor Racing Activities Limited
Granville Hall
Granville Road
Leicester
LE1 7RU.”

12. The Employment Tribunal sent to the Respondents on 17 September 2019 a copy of all correspondence and the claim form. The Respondents were told that if they wished the default judgment to be reconsidered they must set out full grounds of why it is in the interests of justice to do so. They were to seek an extension of time to enter an ET3 response and they must submit a draft of the proposed response together with an explanation as to why it was not entered on time.

Application for reconsideration

13. On 4 November 2019 Kate Jackson from Peninsula applied for reconsideration of the Tribunal judgment.

14. The application was made under Rules 70 and 71 of the rules and said that it was in the interests of justice to reconsider the judgment “as the Respondent did not receive the ET1 form until 17 September 2019”.

15. It said that:

“It is the Respondent’s assertion that the address where the original papers were sent were situated in a rural location whereby post is regularly not received. The Respondent is in the process of moving to trade as Driving Experiences Limited for which the Claimant was aware and involved in. For the assistance of the Tribunal, Driving Experiences UK Limited has significant control over Everyman Racing Limited. The trading address for which is Granville Hall, Leicester.”

16. It was said that until 17 September 2019 the Respondents had not had sight of the ET1 form. They said that the Respondents had acted expeditiously following receipt of the ET1 and that it was in the interests of justice for the decision to be reconsidered and the Respondent provided with the opportunity to defend the case. They said that if the judgment was not reconsidered the Claimant would receive a windfall of compensation for a case which could be defended.

17. They went on to say that the Respondent had an arguable defence to the claims presented and the interests of justice required the Respondents to be heard.

18. No explanation was given in the application for the delay between 13 August 2019 and 10 September 2019 i.e. the time between the judgment being sent out and the first correspondence being received from the Respondents; nor any explanation as to why the Respondents had further delayed between 17 September 2019 and 4 November 2019 in making that application after they had received the ET1 and other correspondence in respect of this matter.

19. The parties were notified of this reconsideration hearing. The notice told the parties that at the reconsideration hearing the judgment could be confirmed, varied or revoked. If it was revoked the rehearing of the case would follow immediately and both parties should come prepared to call their evidence and present their case.

The hearing today

20. Mr Swanson for the Respondents produced a hearing bundle and Kerry Sanderson, Head of Operations gave evidence on behalf of the Respondents. I had a statement from the Claimant, although I did not need to hear from him and Ms Crew produced a bundle of documents. Mr Swanson also produced written submissions.

21. Ms Sanderson confirmed that the Respondents had 35 members of staff based at their address at Prestwold where the ET1 was sent. Ms Sanderson is employed as the Head of Operations and has only been there for 6 months. She did not work for the Respondents prior to 7 May 2019.

22. She was there though when the claim was sent to the Respondents on 1 July 2019. She explained that the Respondent's offices were "in the middle of nowhere" and that they had problems with the post because their offices are at the end of a lane. She said that they had not received the original ET1, although she could give no explanation as to why it had not been returned to the Tribunal. They had though received the judgment but she could not explain why they had done nothing until 10 September 2019. She could also not explain why nothing had been done between 17 September 2019 and 4 November 2019 when the Respondents finally made their application for a reconsideration.

23. In her evidence she referred to some of the Respondent's documents. She believed that Mr Beri did have a contract of employment. No copy of his contract of employment was produced in the bundle and although the bundle included an induction pack at pages 40-50, there was no blank form of contract of employment in the induction pack. She says that she had undertaken a search in respect of the contract but had not been able to find it.

24. She said that the Respondents have a provision in their contract entitling them to make a deduction from pay. She referred to clause 8 of the deductions from pay agreement which was in the bundle at pages 45-6. It says:

"Any loss to us that is the result of your failure to observe rules, procedures or instruction, or is the result of your negligent behaviour or your unsatisfactory standards of work, will render you liable to reimburse to us the full or part of the costs of the loss."

25. She could not explain though why there was no signed agreement other than saying that the Claimant had been a manager and his personnel file had disappeared following the termination of his employment. There is no evidence though that there was ever a personnel file in existence.

26. In the ET3 document that the Respondents had filed which is at pages 28-36 it referred to the allegation that the Claimant had been dismissed on 19 April 2019. In questions from me she agreed that he had not in fact been dismissed on 19 April 2019 but asserted that he had been dismissed on

19 March 2019, although she was not able to provide me with any reason for the dismissal. The Claimant's case has always been that his employment ended on 19 March 2019 by agreement.

27. She alleged that following the termination of his employment the Respondents had been subject to legal action which had led to a financial loss which was "entirely attributable to the Claimant's conduct". She said that they had lost more than £5,000 although was not able to provide any precise figure. She was also not able to produce any documents in support of her contention that the Claimant was responsible in any way for this loss.

28. She was not able to assist me with any explanation as to why the Claimant had not been paid his holiday pay.

The law

29. The application is made under Rule 70 and 71 of the rules.

30. Rule 70 provides:

"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."

31. Rule 71 provides:

"Except where it is made in the course of a hearing, 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 or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary."

32. In his submission Mr Swanson refers me to a number of cases namely: -

- **Denton and Others v T H White Limited** [2014] EWCA Civ 906
- **Kwik Save Stores Limited v Swain** [1997] ICR 49
- **Pendragon Plc (trading as C D Bramall Bradford v Copus** [2005] ICR 1671

33. He sets out in his submissions the relevant factors for my consideration which include: -

33.1 The reason for the delay.

33.2 The length of the delay.

33.3 The merits of defence/prospects of success.

34. He asserts that the Respondent would suffer prejudice if unable to submit a full response to the Tribunal and says the Claimant will not suffer prejudice and says the decision is in the interests of justice for the Respondents to put their defence to the Claimant's claims. He says that the Claimant would otherwise receive an unjustified windfall of compensation in that liability is contested.

35. He further contends that it would be in accordance with the overriding objective to allow the Respondent an extension of time to present its response.

36. He told me that the Respondent's had paid the sum awarded to the Claimant but assert that the sum was not paid as any admission of liability and he contends that the Claimant is not owed any money at all.

37. For the Claimant Ms Crew contended that: -

37.1 There was no evidence produced of any problems with the post other than the assertion made by the Respondents and no satisfactory reason has been given for the delay.

37.2 The Claimant in this case has not gained any windfall but simply a judgment for the sums he is rightly due to because the Respondent's do not have any defence to the claim.

37.3 If I set aside the judgment it is the Claimant who would suffer the prejudice of having to wait further for the repayment of the sums due to him following his termination of his employment some 9 months earlier.

My conclusions

38. I am satisfied that the Respondents received the original ET1. It was sent to the correct address which was not only the business address where 35 people were employed but also the registered office address of the Respondents contrary to the contentions of Ms Wilkinson in her e-mail to the Tribunal on 10 September 2019. No evidence has been produced to me that could lead me to the conclusion that they had not received the ET1.

39. There is no explanation for the delay in making the application. An application for a reconsideration should be made within 14 days of the judgment being sent to the parties. In this case the judgment was sent to the parties on 13 August 2019. The Respondent's do not contend that they did not receive the judgment but did nothing until 10 September 2019 when they wrote to say that they had not received earlier communications. That is a delay of some 4 weeks which is not explained. Once they had received the ET1 and other correspondence by e-mail on 17 September 2019 there was a further delay of some 6 weeks before they submitted their application for reconsideration having instructed Peninsula. Again, there is no explanation for this delay.

40. It is contended by the Respondents that they have a defence to the proceedings. I am satisfied that they have not produced any evidence to support any contention that they have a defence to these proceedings.

41. They say that they were entitled to make the deduction from the Claimant's wages because of the agreement they had in force under his contract of employment but they have not produced any signed agreement or indeed any signed contract or any evidence at all that there might have been a signed agreement or contract at some time.

42. Furthermore, there is no evidence produced in respect of their said losses as a result of the allegations of the Claimant's negligence. They have had plenty of time to produce any such evidence but they have produced none.

43. No explanation is given at all as to why they would be entitled to not make any payment in respect of his holiday pay. On the evidence I have seen the Claimant worked for the Respondents for some 2 months, accrued holiday during that period and has not been paid at the termination of his employment for the holiday he has accrued. No evidence to the contrary is provided to me.

44. The Respondents say that they have provided a written statement of initial particulars of employment but again have provided me with no such evidence of any contract signed by the Claimant.

45. I am satisfied that the Claimant is entitled to the sums due under the judgment that I signed on 8 August 2019 and nothing that I have heard from the Respondent persuades me that there is any prospect of them arguing that they have a defence to the claims. They have none.

46. I am satisfied that the only party who will suffer prejudice if I set the judgment aside is the Claimant who has not gained any windfall from the Respondents but has simply obtained the sums that he is rightly due to following termination of his employment with the Respondents.

47. For these reasons the application fails and is dismissed.

Employment Judge Hutchinson

Date 13 January 2020

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.