EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S Wilson-Roberts	**v**	Network Rail

Heard at: On the papers **On:** 29 January 2020

Before: Employment Judge S Moore (sitting alone)

JUDGMENT

The judgment striking out the claim on the grounds that it was submitted out of time is revoked pursuant to rule 70 of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. The claimant was dismissed on 13 July 2018 for, amongst other things, falsifying a safety record; that is stating in a document that safety tests had been undertaken on the rail network when they had not been. His claim form was presented to the tribunal on 5 November 2018. He lodged a further claim form on 1 January 2019 effectively providing further and better particulars of his first claim, stating that at the relevant time of the misconduct he was suffering from stress, that he had been treated unfairly compared to his depot supervisor and that the respondent had not taken into account his employment history of 27 years when applying the sanction of dismissal.

2. The respondent subsequently made an application that the claim be struck out on the grounds that it had been presented out of time and/or that it disclosed no reasonable prospect of success and/or that a deposit order should be made on the grounds that the claim disclosed little prospect of success. This application was heard at a Preliminary Hearing on 12 August 2019.

3. Notice of that hearing was sent to Mr Marney, the claimant's Trade Union representative, and to the respondent's representatives by letter of 31 March 2019. However, both the claimant and his representative failed to

attend. When telephoned, the claimant said he had no knowledge of the hearing and was unable to attend because he was at work.

4. I considered the application in the claimant's absence and concluded that his claim should have been presented by 3 November 2018. I found that it had therefore been presented out of time and the employment tribunal did not have jurisdiction to hear it. The claim was struck out.

5. On 2 September 2019 the claimant sent an email to the Tribunal stating that he was not aware of the date of the hearing because his representative had in March 2019 sent an email to him (the claimant) and to the respondent's solicitors stating that he was no longer representing the claimant and that all further correspondence should be sent directly to the claimant.

6. I informed the parties that this email would be treated as an application for reconsideration of a judgment by the claimant pursuant to rule 71 of the Employment Tribunals Rules of Procedure 2013. The Respondent was asked to provide any response to the claimant's application within 14 days and to inform the Tribunal whether it considered the application could be determined without a hearing. The claimant was also asked to inform the Tribunal within 14 days whether he thought his application could be determined without a hearing. Unfortunately, due to an administrative oversight, this direction was not sent to the parties until 23 November 2019.

7. In the meantime, the claimant had sent another email to the Tribunal dated 20 November 2019 in which he reiterated that he had not been aware of the hearing date of 12 August 2019. He stated that the original hearing date for the Preliminary Hearing was cancelled on 6 March 2019 (due to the non-availability of a judge) and that in between the original date of the hearing and the new re-arranged date, his representative had ceased to act for him and had notified the Tribunal and the respondent that all correspondence regarding the claimant's case should be sent directly to him. That email attaches an email dated 8 January 2019 to Emma Doble of the respondent's solicitors in which Mr Marney states that "he believes Sebastian will be having solicitors representing him with regards to the tribunal hearing but have no contact details for them…It would be better for you that all future correspondence is done via him and his solicitors and not addressed to me as I may not have the relevant information."

8. The respondent's solicitors responded to the Tribunal's direction of 23 November 2019 by letter and email of 27 November 2019 stating that it had not received any correspondence from Mr Marney in March 2019 advising that he was no longer representing the claimant, and further that if Mr Marney had informed the claimant of this, the claimant should have informed the Tribunal. It therefore submitted that the claimant's representative was given proper notice of the hearing and that a further hearing was not required.

9. I decided that it was not necessary for the claimant's application for a reconsideration to be determined at a hearing. Each party was given until 4pm on Friday 17 January 2020 to make any further written representations.

10. The respondent responded by email dated 21 January 2020 effectively stating that it had already written to the Tribunal with its comments by email dated 27 November 2019.

11. The claimant responded by email dated 17January 2020. He stated that he was informed by his union that Mr Marney was not going to represent him anymore, and that Mr Marney sent him an email to this effect and stating that he was going to send the same email to the respondent's solicitors and to the Watford Tribunal. In support of this contention the claimant relied on the email he had previously sent to the Tribunal on 20 November 2019 (attaching the email from Mr Marney of 8 January 2019). The claimant further stated that it had become apparent that Mr Marney had not carried out his duties correctly and did not send an email to the Tribunal.

CONCLUSIONS

12. The issue is whether it is necessary in the interests of justice to reconsider the original judgment striking out the claimant's claim. I have come to the conclusion that it is necessary to do so.

13. On the basis of the evidence and chronology set out above, I accept that the claimant was genuinely not aware of the hearing and that he would have attended the hearing had he been aware of it. Further, I also accept that the reason he was not aware of the hearing is not, primarily, his fault.

14. In this latter respect, the claimant's assertion that Mr Marney told him via email that he, Mr Marney, was going to inform Tribunal and the respondent's solicitors that he was no longer representing the claimant is only partially borne out on the evidence, in that I have not seen such an email from Mr Marney to the claimant. Nevertheless, it is clear from the email of 8 January 2019 from Mr Marney to the respondent's solicitors that Mr Marney informed them that he was not intending to represent the claimant going forward, and that all correspondence should be addressed to the claimant. Although the claimant should have ensured that the Tribunal was made aware of the position, I consider that it is reasonable of him to have assumed that Mr Marney would have done that, given that Mr Marney was, until that point, his representative and had taken it on himself to inform the respondent.

15. It is therefore in the interests of justice that the original judgment be revoked. However, the claimant is alerted to the fact that the same decision (to strike out his claim) may be taken again following the re-hearing of the respondent's application(s).

16. The respondent's application to strike out the claim on the grounds that it was presented out of time and/or that it stands no reasonable prospect of success, and/or for a deposit order on the grounds that the claim stands little prospect of success, should therefore be relisted. The time estimate for the re-listed hearing is 3hrs and the parties should come prepared to agree case management orders for the further conduct of the case, should the claim not be struck out.

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Employment Judge S Moore

Date: 06/02/2020

Sent to the parties on:

……..…….

For the Tribunal:

06/02/2020