EMPLOYMENT TRIBUNALS

Claimant: Miss D Egerton

Respondent: Tracey Gibbons t/a TJs Hair and Beauty

Heard at: Manchester **On:** 20 January 2020

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: In person
Respondent: No attendance but written representations received

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that:

1. The respondent's application for an extension of time to present her response is refused; and

2. The Rule 21 Judgment sent to the parties on 18 April 2019 is confirmed.

REASONS

1. This was a reconsideration hearing held on the application of the respondent for the Tribunal to extend time to accept her response out of time and set aside the Rule 21 Judgment. The respondent did not attend the hearing but wrote extensively to the Tribunal by a letter dated 2 January 2020 with attached documents, which letter was treated as her written representations. In reaching its decision, the Tribunal also took into account the respondent's email dated 5 June 2019, email dated 29 July 2019 enclosing a draft ET3 response, email dated 12 September 2019, letter dated 9 September 2019 with multiple attachments (received on 20 September 2019) as well as her representations of 2 January 2020 and a final letter dated 14 January 2020, in which she confirmed that she would not be attending the hearing.

2. The history of the proceedings is somewhat involved, as follows. The claimant commenced her proceedings by presenting her ET1 claim form on 1 March 2019

following Early Conciliation notified on 30 January 2019 with an Early Conciliation certificate issued on 1 March 2019. She claimed simply that she had been employed by the respondent at the respondent's salon in Sale from 12 December 2018 to 5 January 2019 as a Nail Technician, claiming arrears of pay saying then she had been under the impression the hourly rate would be £8 per hour, to be increased to £10 per hour from January and that she would be paid on 15 January 2019. She contended that the respondent never paid her and refused to speak to her about the missing payments before then closing down the business.

3. The Tribunal sent the notice of claim dated 7 March 2019 listing a hearing on 14 June 2019 with an ET3 response due by 4 April 2019, to the respondent's salon premises in Sale identified by the claimant in her claim form. No mail was returned by the Royal Mail.

4. In these circumstances, the Tribunal made a Rule 21 Judgment in favour of the claimant, she having clarified by email dated 1 April 2019 the exact sum claimed being 94¼ hours at the agreed rate of pay at £8.50 per hour, having allowed for breaks which she had enjoyed during her employment. She evidenced texts to the respondent in support of the rate of pay and hours and explained that she was supposed to move up to £10 per hour from January 2019 but that the respondent had changed her mind, and that she wanted to claim £45 for the jacket she had left at the premises and never been able to recover.

5. The Rule 21 Judgment was in the gross sum of £801.13 (94¼ hours at £8.50 per hour) but made no award in respect of the missing jacket since the Tribunal had no jurisdiction in respect of interference with goods. The Rule 21 Judgment was sent to the parties on 18 April 2019.

6. Unfortunately, it appears that the claimant herself failed to receive the Judgment since it is clear from the Tribunal's file that she attended in person on 14 June 2019 to be told that her hearing had not gone ahead in view of the previous Rule 21 Judgment.

7. The first involvement from the respondent was by email dated 5 June 2019 in which the respondent purported to be "writing to appeal and request that this case be re-opened and re-evaluated", including copies of documents referring to the lease break and end of her tenancy at the salon premises. The documentation she attached suggested that she had surrendered the keys to the premises on about 24 May 2019 having given notice to activate the break clause in the lease to end on 23 September 2019. The respondent contended that the claimant had actually been self-employed and she had been speaking with the ACAS conciliator about a settlement with the claimant; she acknowledged only owing the claimant just short of £300. Moreover, she complained that she had received threats from the claimant.

8. Having attended the Tribunal to find there was no hearing on 14 June 2019, the claimant denied having threatened the respondent and reiterated that she had been employed and not self-employed, maintaining (as was consistent with the texts in January 2019 she had earlier evidenced), that she would not have left a regular job to take up self-employment in a new untried business.

9. By a letter dated 19 July 2019, the Tribunal acknowledged both the respondent's letter of 5 June 2019 and the claimant's letter of 14 June 2019, and the

REJ directed that the respondent be notified that all appeals must go to the Employment Appeal Tribunal but that the Tribunal could consider an application to reconsider a Judgment or for an extension of time to present a response if a draft response showing an arguable defence was put forward.

10. By email dated 29 July 2019, the respondent put forward her draft response, again annexing correspondence relating to the surrender of the lease. She also sent a letter dated 9 September 2019 (received on 20 September 2019) asking for the case to be looked at again, enclosing a further copy of the draft response and extensive documentation relating to the end of the lease of the salon premises.

11. This prompted the REJ to direct that a reconsideration hearing be listed to consider whether to accept the response out of time and if so whether to set aside, revoke or confirm the rule 21 Judgment. The Notice of Hearing was sent out on 26 October 2019 for this hearing.

12. As set out earlier, the respondent wrote to the Tribunal on 2 January 2020 explaining that she could not mentally take being faced with the claimant, especially in view of the threats she said the claimant had made, also enclosing a copy of a letter dated 6 January 2019 to her from Greater Manchester Police. Whilst she wrote that she wanted to apologise to the claimant, she said she would like her to revisit the situation and consider the events again and would like to honour paying her for the treatments she had carried out.

13. At the hearing, the claimant gave brief evidence, on oath, expanding upon her ET1 claim form and the details of the calculation of hours she had made and texts she had sent to the respondent. The Judge considered her a witness of truth and accuracy, simply explaining again that she would not have left regular employment before Christmas 2018 to embark on work as a self-employed Nail Technician with the respondent in a brand new salon in Sale and that she had been the only one employed of 4 or 5 assistants at the salon and had kept a careful record if the hours she worked.

The Law

14. The Tribunal reconsidered its Judgment in accordance with the principles set out at Rule 70 and the procedure at Rules 71-72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The Tribunal also considered its overriding objective at Rule 2 and the procedures at Rule 20, in particular Rule 20(1) and (4), of the 2013 Rules.

Conclusion

15. Having heard the claimant, but especially having considered in detail the documents provided by the respondent, the Judge determined that the application for an extension of time should not be granted. This application was first made some two months after the time for presenting a response had expired and a month and a half after the Rule 21 Judgment was issued; the formal draft response which enabled the application to proceed was even later. No mail sent to the respondent's salon premises had been returned by Royal Mail, and the respondent's attached documents with her correspondence and draft ET3 response showed that she had only relinquished the lease on the premises, whether or not she had continued to run

the business from January 2019 onwards, in May 2019. There was thus no reason why the notice of claim and then the Rule 21 Judgment should not have been received and opened by the respondent within a few days of delivery to the salon premises.

16. There needs to be finality in proceedings and the respondent has not here established that it is in accordance with the overriding objective and within Rules 72 and 20 to accept the response out of time and thus to revoke the Rule 21 Judgment.

17. In any event, had the Tribunal been dealing with matters fully at a further hearing or upon a full reconsideration of liability hearing including weighing the evidence of the parties, it would have been fully satisfied on the balance of probabilities of the accuracy and truthfulness of the claimant's evidence and would thus have accepted that she had worked for 94¼ hours without payment at the original agreed rate of £8.50 per hour for the respondent. The respondent's argument that there had been no written contract does not mean that no contract of reemployment was initially entered into.

18. In all these circumstances, the Rule 21 Judgment is confirmed.

Regional Employment Judge Parkin

Date: 20 January 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
31 January 2020

FOR THE TRIBUNAL OFFICE

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