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EMPLOYMENT TRIBUNALS

Claimant: Mr E Mehmet

Respondent: Tanber Solutions Limited
(trading as Tanber Solutions Limited HL Services)

Heard at : East London Hearing Centre

Before: Employment Judge John Crosfill

On: 22 January 2020

Appearances

Claimant: In person

Respondent: No appearance or representation

RECONSIDERATION JUDGMENT

1. The Respondent's application for a reconsideration of the judgment dated 29 July 2019 is dismissed.

REASONS

1. The matter was listed before me to consider the Respondent's application for a reconsideration of my judgment signed on 29 July 2019 and sent to the parties on 22 August 2019.
2. The Claimant presented his ET1 on 8 April 2019 in which he complained that the Respondent had failed to pay him holiday pay for the period from the commencement of his employment to 31 December 2018. He said that he had been told that the sum he was paid included holiday pay but that nothing appeared on his payslip.

3. He gave an address in Ilford for the Respondent and the ET1 was duly served upon that address. No ET3 was filed on behalf of the Respondent. Upon consideration of whether to enter judgment under rule 21 a decision was made to await the final hearing on 29 July 2019.

4. The matter came before me on 29 July 2019. The Claimant attended but the Respondent did not. I had no reason to believe that the Respondent had not been properly served. I therefore decided to proceed in the absence of the Respondent. The Claimant was able to show me one pay slip sent electronically which did not disclose any payment of holiday pay. I accepted his account that he had been told that he was not entitled to separate pay for annual leave. He told me that on Christmas day he had not worked and had not been paid. He told me that he had not taken other leave because he did not know if he would be paid. I concluded that the Claimant had been prevented from taking leave. I found that applying the reasoning in **King v Sash Windows C-214/16 CJEU** I was obliged to interpret the Working Time Regulations 1999 in accordance with EU law. As such I held that the Claimant was entitled to pay in respect of the annual leave he took and ought to have been permitted to take.

5. On 11 October 2019 the Tribunal received an e-mail from Hazel Lee on behalf of the Respondent. She suggested that as the Claimant had commenced trading on 7 February 2019 it could not be liable for any payment of holiday pay predating that date. I caused a letter to be written asking whether the Respondent wished to apply for a reconsideration. I pointed out that on the brief facts set out in the e-mail it was possible that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') might apply and suggested that the Respondent make its' position clear. That letter was sent by e-mail and was clearly received because it was acted upon.

6. On 18 October 2019 Hazel Lee sent a further e-mail saying that she was making a request for a reconsideration. She suggested that TUPE could not apply because the contract under which the Respondent supplied services makes no mention of TUPE. Plainly this is wrong. She further asserted that the proceedings had not been served. She says that the address given had never been the address of the Respondent. I note that it was not the Registered Address which is in Market Harborough.

7. I considered that the Respondent's assertion that it had not been served could only be resolved at a hearing. In addition, I considered that the issue of whether TUPE applied was arguable. Finally there were arguable points on time limits and the proper interpretation of the Working Time Regulations 1999. As such I decided to list the matter for a hearing. It was listed for today. The notice of hearing was sent to the parties by e-mail to the same address used by Hazel Lee. I am satisfied that the Respondent knew of the hearing.

8. I had directed that 7 days before the hearing the Respondent file a draft ET3 setting out its defence to the claim. The Respondent failed to comply with my order.

9. On 22 January 2020 the Claimant attended but the Respondent failed to attend. When the Tribunal clerk rang the mobile telephone number given by Hazel Lee in her correspondence it was answered by 'Michael'. He said Hazel Lee was off sick and he knew nothing of the proceedings.

10. The Claimant told me and I accept that the address that the Respondent operated out of was the one he had given. He had taken the time to send a copy of my Judgment by a signed for postal service and says that it had been signed for.
11. I am satisfied that the Respondent was aware of the hearing but has chosen not to attend. I therefore proceeded in the absence of the Respondent.
12. Nothing that the Respondent has written contradicted the Claimant's case that he was told that he would receive no separate pay for holiday. The Respondent appears to blame a predecessor. I note that the Respondent was incorporated throughout the period of the Claimant's employment. The Claimant says that he worked for that company continuously. The documents supplied by the Respondent do not contradict that.
13. The Respondent has not satisfied me that it was not properly served.
14. There may have been an arguable defence to the claim but the failure of the Respondent to participate at each stage means that no defence has ever been properly formulated.
15. It would be for the Respondent to establish that it is in the interests of justice to reconsider my judgment. I find that the Respondent has shown no good reason why I should.
16. In the circumstances I dismiss the Respondent's application.

Employment Judge John Crosfill

Date: 4 February 2020