



EMPLOYMENT TRIBUNALS

Claimants: Mrs M Deans
Ms P Hind

Respondents: (R1) Dr U Laddha
(R2) Mr S Singh

Heard at: Lincoln **On:** Wednesday 29 January 2020

Before: Employment Judge Britton (sitting alone)

Representatives

Claimants: Both present

Respondents: (R1) represented by Mr R Choudhry, Solicitor
(R2) No appearance and no explanation for non attendance.

JUDGMENT

The Employment Tribunal Judge gave judgment as follows:-

1. The application of the first Respondent for reconsideration of the Judgment succeeds. He is dismissed from the proceedings.
3. The application of the second Respondent for reconsideration of the Judgment is dismissed for want of prosecution. The Judgment accordingly remains against him.
3. But the Judgment is corrected so as to delete the award for redundancy payment by Martine Deans as she did not have qualifying service. The remainder of the Judgment stands.

REASONS

Introduction

1. My task today is first of all to consider the application for reconsideration of what I would describe as the default judgments issued in this matter and which I made against the two Respondents. Stopping there notice that there would be this reconsideration hearing was at my direction issued to the parties and they were therefore informed on 21 December 2019 that there would be this hearing. That was e-mailed to all parties on 21 December and for my purposes the important bit being that as regards the second Respondent it was sent to the e-mail address which he himself had provided on 6 April 2019 and to which I shall return. As it is Mr Singh has not appeared before me, and of importance I am

particularly persuaded by the evidence of Paula Hind that he was in contact with her only a week or so ago and from what she tells me he obviously knew the date of today's hearing because he volunteered it in a short conversation with her.

2. So what that means is that Mr Singh has not attended to pursue his application and has given no explanation why not. Thus I dismiss it and the judgement will remain against him as corrected and thus continues to be enforceable

3. Dr Laddha has attended and is represented by Mr Choudhry. He has given evidence under affirmation before me.

4. In the run up to today Peninsula came on the record on 24 January 2020. Inter alia they sought an adjournment of today but my colleague Employment Judge Heap, given that this was opposed by the Claimants, ordered that the proceeding today would go ahead in terms of the reconsideration application but whereas I had directed that I would go on to hear the merits if I decided to grant the reconsideration, this would now not take place. However the parties present came today prepared to deal with all matters; thus with their consent I have gone on to deal with the merits.

Findings

5. The Claimants presented their joint claim (ET1) to the Tribunal on 5 December 2018. They had prepared it themselves. It was fully pleaded. Set out was that Martine Deans had been employed by the dental practice at Grimsby as a Receptionist from 26 September 2016. Paula Hind had commenced her employment as a Dental Nurse on 23 September 2015. Three Respondents were named; the then first Respondent was stated to be "A and S Dental". Because of financial difficulties the practice ceased to trade on 15 August 2018 or thereabouts, albeit the two Claimants carried on doing caretaker work so to speak for a few weeks because inter alia patients would need to be informed and for that purpose they remained key holders. That is again not in dispute today. The problem is that they were already owed wages which they had not been paid and of course taking it as being clear that this employment ended at latest mid-September they did not receive notice pay. So they were claiming for:-

5.1 Unpaid wages.

5.2 Outstanding unpaid holiday entitlement.

5.3 Notice pay.

5.4 In each case redundancy pay.

6. Now when I issued the default judgment to which I shall come I was not aware that Martine Deans did not have sufficient employment for the purposes of redundancy payment and that is because two years is needed at the effective date of termination. That has become clearer today. And so without further ado I must correct the previous judgment that I had given for Martine Deans so that paragraph 2 in terms of an award of redundancy as claimed by her is deleted by way of correction. The situation does not of course apply to Ms Hind who had the necessary qualifying service.

7. In any event the Claimants gave addresses for each of the Respondents

pleading that they were employed by in effect Dr Laddha and Mr Singh not understanding of course the refinements of the law in terms of such matters as corporate identities. Thus in due course when I made the default judgment as A and S Dental was not a legal entity I in effect treated it as not being a Respondent as it does not exist in law and thus I thus made judgments on a joint and several liability basis against Dr Laddha and Mr Singh trading as A and S Dental.

8. Stopping there the proceedings were served out in the usual way. The addresses given for Dr Laddha and Mr Singh were their home addresses. There is no evidence before me that the information that the Claimants gave was incorrect. As to A and S Dental it was the practice address in Grimsby.

9. So the proceedings were served out on 25 February 2019 with a last date for filing a response on 25 March 2019. The case had been listed for a one hour hearing at Lincoln on 29 April.

10. As no response had been received from the Respondents and in particular Dr Laddha and Mr Singh this Judge therefore issued default judgments, the Claimants having already quantified their claims. These were signed off by this Judge on 2 April and issued to the parties the same day.

11. On 3 April 2019 Mr Singh e-mailed into the Tribunal using the same e-mail address as the Claimants had provided when each of the claims were issued, in effect making application for reconsideration. This was on the basis that he was not the employer but in fact it was A and S Dent Limited. He accepted that the Claimants were owed the sums as they had pleaded. He did not pick up the lack of qualifying service in terms of redundancy for Mrs Deans. He expressed regret that the business had to close. This was followed on 6 April 2019 by a formal application by him for reconsideration of the judgment pursuant to rule 71 of the 2013 Employment Tribunal Rules of Procedure. This had been prepared for him by a solicitor. It was on the basis that the correct employer was A and S Dental Limited At that stage there had been no communication from Dr Laddha.

12. Then on 11 April 2019 he also applied for reconsideration. It was the same defence. He had picked up that Mrs Deans lacked qualifying service for the redundancy payment. He did not at that stage, however, give any explanation as to the lateness of his application and he did not file a response unlike Mr Singh. His explanation for not having filed a response by the deadline was that he had been dilatory in opening his mail. However as to Dr Laddha, he does not need to file a response under the current rules in order to make his application for reconsideration. The preceding rules required that a proposed response be filed but the 2013 Rules do not.

13. However to my direction he was asked to reply explaining what his reasons for the late response were, and thus on 30 May he did so reply pointing out that he had moved addresses and he had not received any documentation until he got the judgment. I also at that stage directed that the Claimants be sent the applications in order that they could have an opportunity to reply. Unfortunately the direction was not carried out. When it was spotted at the beginning of December, they were written to and they replied making plain that they objected to the reconsideration and reciting the events as they saw them to be. Therefore on that basis the hearing was listed at my direction for today.

14. On 24 January Peninsula came on the record. I repeat that Mr Choudhry is content that I proceed today. The e-mail from Peninsula was penned by Sophia Liu, a trainee solicitor. It stated "have been appointed to represent the Respondents in the above case". It was then set out "it is the Respondents' case that the ET1 claim was never received and therefore the Respondents were not able to submit an ET3 response within the deadline. The Respondents were only alerted to the above matter when the second Respondent Dr Laddha saw that a judgment in detail was sent to his previous address." Stopping there as I pointed out to Mr Choudhry this could not be correct in relation to Mr Singh because in his explanation he had accepted that he had been dilatory about opening the correspondence because he was busy. He never said that he had not received the original case papers.

15. As it is without by attention was then drawn to that Ms Liu wrote in yesterday to the Tribunal to correct the previous e-mail and thus to the effect that Peninsula only acted for Dr Laddha. I have accordingly proceeded on that basis.

16. As to his explanation for not filing a response, as given under oath it is as follows. Thus Dr Laddha has had no real communication with Mr Singh since the failure of the practice around the end of August 2018. There was a bitter fallout between them in the aftermath. He had lived in the address to which the Tribunal sent the case papers as a tenant but on 13 January 2019 he moved addresses to 10 Bickerton Close also in Leicester. Mr Singh has always lived in Leeds. The property at Bickerton Close Dr Laddha is buying with a mortgage. I am well aware of the problems that there can be when new tenants move into properties and in terms of not paying any attention to post that may come for a previous tenant. Having moved Dr Laddha went about asking the Royal Mail to redirect his post but it seems that this was a few weeks after he moved. Thus did not know anything about these proceedings until the judgment came on his doormat which was on 11 April 2019 at which stage he acted promptly in contacting the Tribunal.

17. I have no evidence to contradict Dr Laddha and indeed I found him in that respect an honourable witness. So in that sense I accept his explanation.

19. That brings me on to the next limb of the approach to a reconsideration application and which is set out by Mr Choudhry in his written submissions. Thus engaged is **Kwik Save Stores Limited v Swain and Others** [1997] ICR 29 (1996) per Mr Justice Mummery as he then was. Now of course the rules have changed but there has been no authority since gainsaying the approach to take to reconsideration as he set it out to be. So I have to consider whether or not I revoke the judgment it being in the interests of justice so to do. I should first consider the explanation supporting an application for an extension of time. The more serious the delay, the more important it is the Employment Judge is satisfied the explanation is honest and satisfactory. Well I have dealt with that. This was not a great delay and I believe Dr Laddha's explanation.

20. However, I then have to consider the merits of the defence. Justice will often favour an extension being granted when the defence is shown to have some merit. Finally I weigh in to the balance the prejudice if Dr Laddha's request was refused as opposed to the prejudice the Claimant's would suffer it was granted.

21. As the merits therefore need to be considered and both parties have

brought documents thereto and thought liability would be dealt with if the reconsideration was granted, this explains why with their consent I have taken the approach which I have.

22. The Claimants have produced their contracts of employment. These were signed on behalf of the employer by Christine Bolton (CB). She was then the Practice Manager having taken on that role in May 2016. So after Paula had joined the employ but before Martine. CB left in May 2018 it not being in dispute that this was because she was working in difficult circumstances with the problems with the increasing indebtedness of the practice and the fact that Mr Singh and Dr Laddha did not play hands on roles in managing the practice. In fact Dr Laddha was working as a locum, mainly in Coventry but also in Leicester and it seems Mr Singh was working in Leeds. And their own relationship was breaking down as is clear from Dr Laddha. But the key point is that on these contracts of employment the employer was stated to be "*Mr Atul Laddha & Mr Sumit Sigh of Cosmetic Dental Practice, Grimsby, Lincolnshire, DN31 2AB*". It is not challenged that CB had authority as part of her role to issue these contracts. There is no use of limited in the title for Cosmetic Dental Practice and more importantly there is no reference at all to A and S Dental or for that matter Dent.

23. Stopping there A and S Dent is a limited company. I already had on file the Companies House details in relation to it which we have been able to look at again today in the course of the hearing in terms of updating from the Companies House website. It shows that A and S Dent Limited is still active in the sense that it has not been struck off. Its Directors are the two Respondents. There has in fact been an application to oppose it being struck off which I now understand from Dr Laddha to be HMRC. So in that respect it remains registered at Companies House but it is not in any form of insolvency. It simply remains dormant. Stopping there Dr Laddha has confirmed to me that he and Mr Singh set up this company back on 22 May 2013 as an acquisition vehicle through which they could, if they found a suitable dental practice, buy the same. That brings in Cosmetic Dental Practice Limited. In April 2015, it then having as its Directors a Polish dentist in particular, it was sold to the two Respondents. They acquired it through A and S Dent Limited. Cosmetic had an NHS contract. Thereafter what happened was that the NHS monthly payments which were invoiced by Cosmetic to the NHS, in fact via the bank payment details given by the Respondents via their accountants to the NHS, were in fact paid into A and S Dent Limited. I have seen the company accounts for both businesses today via Companies House in the presence of the parties and what they show is that the initial substantial asset base of Cosmetic was depleted. Post acquisition its directors were the two Respondents. The income was of course going into A and S Dent Limited but its liabilities were ballooning. In other words a classic case of overtrading, doubtless because of the borrowing costs of acquiring Cosmetic. Concerned NHS cancelled the contract. Lloyds bank had charges over the assets of Cosmetic and which it enforced: hence the closure of the business in and which it in turn in due course sold. Cosmetic was placed in compulsory liquidation on 17 July 2019. It is now in the hands of the official receiver in Leeds. Dr Laddha remains personally liable for £50k approx. , I gather via guarantees on the loans via A and S Dent Ltd.

24. But was Cosmetic the employer. Conversely was it the two respondents. Finally where does A and S Dent fit in? Dr Laddha, says that all payroll post the acquisition via A and S Dent of Cosmetic was dealt with through the former. Thus it became the employer. This was on the advice of their then accountants Morris & Co who specialise in dental practices. The Claimants have come along with

payslips and P60's and they show that the employer for the purposes of PAYE was A and S Dent Limited. I repeat that Dr Laddha and Mr Singh were very much at arm's length. I cannot get any assistance out of JB because she has long since left the practice. I understand how the Claimants feel, they have not been paid and they do not understand corporate matters.

25. So what is the significance of all of this? Listening to Dr Laddha, I have no doubts that he never once thought that he and Mr Singh were employing the Claimants personally. They understood that they were employing them through A and S Dent Limited. And even though JB issued contracts viz Cosmetic Dental Practice I do not know if that was because she understood Dr Laddha and Mr Singh to be in a partnership, which clearly is not the case as they were company Directors whether it be of Cosmetic or A and S Dent Limited.

27. Finally I understand from Ms Hind that she was told by the BES officials at the Insolvency Fund that although I had put in my judgment in relation to the redundancy payment and for their purposes that section 166 of the Employment Rights Act 1996 applied, they could not deal with it unless the Respondent was formally insolvent. Well that is wrong. Section 166 is quite clear. Once a judgment has been obtained from a Tribunal vis any liability for a statutory redundancy payment then the Secretary of State must pay it. His recourse is to seek to recover it from the errant employer.

29. What is the way forward for the Claimants, it is as follows:-

29.1 In relation to Ms Deans I correct the existing judgment in terms of now deleting the clause relating to a payment of a redundancy payment as she lacks qualifying service.

29.2 Otherwise in relation to both of them the judgment against Mr Singh remains as he has failed to prosecute his reconsideration application.

29.3 In relation to the claim against Dr Laddha it is therefore on reconsideration dismissed.

30. I had said I would now issue a new judgement adding as to liability A and S Dent Limited. However upon reflection this cannot be done without its joinder and then re-service of the pleadings. Why should the Claimant's be so inconvenienced given the non appearance of Mr Singh?. Thus unless Mr Singh seeks to further apply for reconsideration and succeeds, which would require a very convincing explanation, the judgments remains solely now against him.

Employment Judge Britton

Date: 31 January 2020

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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