



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Aguilera

**Respondent:** Football 4 Football Ltd

**Heard at:** Manchester

**On:** 13 December 2019

**Before:** Employment Judge Slater  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Dowe, Director

**JUDGMENT** having been sent to the parties on 14 January 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claim was presented on 1 April 2019. The claimant was claiming unpaid wages and holiday pay. He also brought a claim for notice pay which was later withdrawn. He claimed he had worked for the respondent from 1 October 2018 to 14 January 2019. Some payments had been made to him but not the full payment that he said was due. He claimed £2,900 in unpaid wages and £490 in holiday pay.
2. On 7 May 2019, notice of claim was sent to the respondent. The respondent did not respond to the claim within the required time period.
3. The notice of claim was sent to an address in Bury New Road. Until the day of this hearing, it had not been suggested by the respondent that they did not receive this notice of claim soon after the date it was sent, and, in any event, before judgment. The address which was used for the correspondence is an office which Mr Dowe attends regularly, although it is not the registered office of the company. I heard at this hearing from Mr Dowe, for the first time, an explanation about difficulties with receiving post.

4. On 25 June 2019, a letter was sent by the tribunal to the claimant which was copied to the respondent. Mr Dowe accepts that he received this letter around this time. This letter informed the claimant that the respondent had failed to present a response to the claim within the required period and said that a Judgment could be issued which would avoid the need to attend the Tribunal to give evidence at a hearing. Mr Aguilera was asked to provide clarification of the amounts being claimed.

5. On 17 July 2019 a Judgment issued under rule 21 of the Employment Tribunals Rules of Procedure 2013 was sent to the parties. Mr Dowe accepts that he received this Judgment soon after it was sent.

6. On 30 July 2019, the first contact was made on behalf of the respondent with the Employment Tribunal. This was a letter from solicitors, JMW Solicitors LLP, instructed by the respondent. The letter applied for a reconsideration of the judgment. The letter included the following explanation as to the failure to respond to the claim:

“Julian Dowe (whose current role is Director at the respondent) received the claim form from the Tribunal, but unfortunately misunderstood what was required from him. Mr Dowe mistakenly thought he just needed to attend the hearing that had been listed in order to defend the claim and did not realise that a written response was also required before then. Mr Dowe has now noted the wording in the notice of claim letter regarding a response and date and sincerely apologises for his error. Mr Dowe has never been involved with Tribunal claim proceedings and simply made an unfortunate but human error. Mr Dowe noted the hearing date and fully intended to attend the same in order to defend the respondent’s business. The respondent is committed to defending the claims brought if permitted to do so by the Tribunal.”

7. No draft response was sent at that time. However, the letter set out matters which the respondent disputed and the basis for what would be the defence.

8. A letter was sent to the parties by the tribunal on 13 September 2013, stating that, after an initial consideration, Employment Judge Slater was of the opinion that the application for reconsideration should proceed, inviting any objections from the claimant and seeking the views of the parties as to whether the application could be determined without a hearing.

9. The claimant objected to the application to reconsider the claim.

10. In a further letter from the respondent’s solicitors dated 1 October 2019 they included the following:

“The respondent has explained the reasons for failing to submit the response in time in its earlier application (copy attached). Whilst the claimant has previously referred to legal action when corresponding with Mr Dowe, the respondent in turn fully intended to defend its position to any such legal action and Mr Dowe mistakenly thought he just needed to attend the hearing that had been listed in order to do so. Whilst Mr Dowe has used the term ‘without prejudice’ in correspondence, that is a separate point and does not in turn

mean that he is familiar with Employment Tribunal proceedings as is being suggested. Indeed, it is averred that he is not, having never been involved with Tribunal proceedings previously.”

11. That letter also stated that Mr Dowe had not sought legal advice prior to the default Judgment being received.

12. Notice of a reconsideration hearing was sent to the parties on 11 November 2019. This included an order that a signed witness statement for Mr Julian Dowe, setting out his explanation for the respondent failing to present its response in time, be sent to the Tribunal and the claimant by 25 November 2019.

13. A draft response was sent to the Tribunal on behalf of the respondent. The essence of this was that the respondent claimed that the claimant was not a worker or employee, therefore, the Tribunal did not have jurisdiction to consider his complaints. It also asserted that any payments made to the claimant were by way of loans. This was consistent with what was said in correspondence and has been said at this reconsideration hearing by Mr Dowe.

14. The reconsideration hearing was postponed and relisted at the respondent’s request to enable Mr Dowe to attend to give evidence. Mr Dowe did not send in a signed witness statement as had been required by the orders but did send an email on 25 November 2019 which read as follows:

“Hi, I have been informed that I need to send a statement explaining why I didn’t respond in time to Matthew’s claim.

“I can no longer afford to have legal representation by a solicitor and therefore will try to move forward on my own. The cost has apparently gone over what Matthew is claiming but I absolutely felt it necessary to challenge to the best of my ability someone trying to take advantage of friendship with knowledge of my limitations and aspirations.

“I personally thought that I would need to attend a hearing to defend my case after the ACAS involvement that I wished to have my say as to why this claim just isn’t true.

“I have not been involved in any employment processes or proceedings previously as I’ve never had and still don’t have any employees.

“However, I do take the law very seriously and just wanted to personally follow the process in defending myself as I have confidence in the system that the truth will come out to decide the outcome.

“Please let me know if there is anything else that I need to send to you.”

## **The Law**

15. The law that I have to apply is contained in rule 70 of the Employment Tribunals Rules of Procedure 2013. This provides that a Tribunal may, either on its own initiative or on the application of a party, reconsider any Judgment where it is necessary in the interests of justice to do so, and that, on reconsideration, the

original decision may be confirmed, varied or revoked, and, if it is revoked, it may be taken again.

## Conclusion

16. Until this hearing, the explanation put forward by and on behalf of the respondent for not having responded to the claim was that Mr Dowe misunderstood what was required of him. It had been accepted, on his behalf, that he had received the notice of claim. It was not suggested, until this hearing, that he had not received notice of the claim prior to the Judgment. The respondent said instead, through solicitors, and consistent with Mr Dowe's email of 25 November 2019, that Mr Dowe did not understand that a written response was required before the hearing which he intended to attend to defend the claim.

17. Mr Dowe changed the explanation he had been giving as to why he had not responded to the claim when he was having difficulty answering the Judge's questions about what he had read in the notice of claim letter. He then said, for the first time, that he did not get the letter until after the Judgment. Later in his evidence, he said he was not sure whether he had got the letter before or after the Judgment. He gave an explanation about difficulties with post which he had not previously advanced. Given the changing version of Mr Dowe's explanation and the late explanation about not receiving the letter, I do not find the explanation given at this hearing that he did not receive the notice of claim around the time that it had been sent to be credible. I conclude that he did receive the notice of claim soon after it was sent and that he read this but decided (for whatever reason) not to respond. The notice of claim letter is clear that to respond to the claim, completion of the response form is required by the due date. Mr Dowe accepted in evidence that he realised this was an important letter. I do not consider it credible that he would not have read the letter in its entirety when he received it.

18. Even if it had been the case that Mr Dowe did not receive the notice of claim soon after 7 May 2019, he accepted that he received, soon after 25 June 2019, the Tribunal's letter which informed the claimant that the respondent had failed to present a response to the claim within the required period, and that a Judgment could now be issued which would avoid the need for a hearing. Mr Dowe says that he consulted solicitors about this. However, this is inconsistent with his solicitors' letter of 1 October 2019, in which they say that he did not take legal advice until after the Judgment was received. Mr Dowe explains in response to this that he was shopping around for solicitors, getting quotes. Mr Dowe's explanation for not contacting the Tribunal himself when he got the letter of 25 June was that he was out of his depth and wanted to get legal advice.

19. I do not find it credible that, if the letter of 25 June 2019 was the first indication to him that a claim had been presented, and he had not responded as required, Mr Dowe would not have instructed solicitors to write immediately to the Tribunal or, alternatively, have contacted the Tribunal himself.

20. I consider it more likely than not that Mr Dowe had been aware of the claim since soon after the notice of claim was sent because he received the notice of claim soon after it was sent and he did not instruct solicitors until after the Judgment.

21. I conclude that the respondent has not provided a satisfactory explanation for not responding to the claim within the required time period.

22. The claimant and the respondent had different accounts of the relationship between them and the reason for the payments which it is accepted were made to the claimant. It is possible that the respondent would have had an arguable defence to the claim on the basis that they say the claimant was not an employee or worker and any payments made were personal loans rather than payments for work done. However, the fact that Mr Dowe chose to bring along to this hearing documents which only relate to the relationship between them prior to the period during which the claimant says he was employed casts some doubt on the likely strength of the defence. The claimant says that he would be able to provide evidence to substantiate his claim if it was judged on its merits.

23. Rule 70 of the Employment Tribunals Rules of Procedure 2013 provides that any Judgment may be reconsidered where necessary in the interests of justice to do so. There is an interest in the finality of litigation. Judgments which have been made under rule 21, where a respondent has failed to present a response, should not be easily revoked where there is no satisfactory explanation for failing to enter a response. Although it is possible that there is an arguable defence to this claim, I do not consider that this possibility, in the absence of a satisfactory explanation for not responding to the claim, makes it in the interests of justice to revoke the Judgment.

24. I, therefore, confirm the Judgment sent to the parties on 17 July 2019.

Employment Judge Slater

Date: 13 February 2020

REASONS SENT TO THE PARTIES ON

19 February 2020

FOR THE TRIBUNAL OFFICE

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