



EMPLOYMENT TRIBUNALS

Claimant

Mr J McPherson

v

Respondent

Empowerhouse Limited

PRELIMINARY HEARING

Heard at: Watford

On: 13 March 2020

Before: Employment Judge R Lewis

Appearances:

For the Claimant: In person (assisted by Ms J Stanford)

For the Respondents: Mr Nichols - Counsel

JUDGMENT

1. The response is accepted. A case management order is made separately.

REASONS

1. Although reasons were not requested, it seemed to me right to summarise the position briefly.
2. This was the hearing directed on 20 January 2020 by Employment Judge Heal.
3. The respondent had since that hearing submitted detailed grounds of resistance on 10 February 2020, supplemented by a response form ET3 on 4 March. At this hearing, it produced a witness statement from a Director of the respondent, Ms R Soudabi, and Mr Nichols referred me to paragraph 18 of Grant v Asda UK EAT/0231/16/BA.
4. The claimant's terms of engagement, headed Contract of Employment, but not necessarily a contract of employment, gave the respondent's address in GU21. The claim form was properly sent there on 17 April 2019.

5. The evidence of Mr Brown and Ms Soudabi was that that address was a residential property owned personally by Mr Brown (not by the respondent) and let by him. Their evidence was that a Royal Mail redirect had been made, but clearly not implemented.
6. When, after some time, it was noticed that no post was coming from that address, Mr Brown travelled there and on 14 December 2019 discovered the present claim form. He instructed solicitors, who on 17 January 2020 went on the tribunal record, and instructed counsel to attend on 20 January.
7. I accept the honesty of that explanation. I record that it is honest, but not a particularly good explanation. In particular, having regard to the breadth of regulation applicable to the respondent, and to Mr Brown in his capacity as residential landlord, the failure to pursue the possibility of an error in the redirect; and the failure to understand or act urgently on receiving the claim form, are each difficult to understand.
8. I accept Mr Nichols' observation that Judge Heal directed submission of "the response". I do not accept that that was limited to grounds of resistance and I find that she directed submission of the response form, in accordance with the mandatory requirements of Rule 12. I therefore find that there was not full compliance with her order, or with the rules, until 4 March 2020, the response having originally been due on 5 May 2019.
9. When I come to consider whether the response should be accepted, I was helped by paragraph 18 of Grant:

"In exercising this discretion, tribunals must take account of all relevant factors, including the explanation or lack of explanation for the delay in presenting a response to the claim, the merits of the respondent's defence, the balance of prejudice each party would suffer should an extension be granted or refused, and must then reach a conclusion that is objectively justified on the grounds of reason and justice and, we add, that is consistent with the overriding objective."
10. I must take care not to conduct a mini trial or a mental trial. I note that the factual matrix is that the claimant was a Senior Support Worker in residential accommodation provided for young people aged 16 to 25, mainly from local authorities, mainly from the London Borough of Brent. As that age range indicates, many of them were in care, or leaving care. It was said that there was an occasion in May 2018 when the claimant was racially insulted by a young person. It was said that there was a serious altercation, captured on CCTV (video not audio) between the claimant and the young person, in which the claimant displayed inappropriate body language and used inappropriate verbal language. Those allegations were vehemently denied by the claimant, who also denied Ms Soudabi's observation that he had been shown the CCTV during the disciplinary. The respondent's case was that those events led to the claimant's dismissal. The respondent asserted further that the claimant's continued employment was a concern for the LADO, a matter which the claimant denied.
11. I find that by the above, the respondent has plainly put forward a defence which is arguable.

12. The overwhelming factor which has led me in all these circumstances to find that the balance is in favour of allowing the response to be accepted, and the matter proceeding to hearing, is the interests of the young people. The young people leaving care have had a difficult start in life; all agree that they are entitled to the very best possible support in leaving care and early adulthood. These are serious allegations on both sides, which touch upon the service provided by the respondent, as well as on the professionalism and conduct of the claimant. It is overwhelmingly in the interests of justice, and in the interests of the young service users, that they be heard.
13. I accept that this decision places the balance of prejudice against the claimant, but that prejudice seems to me heavily outweighed by the above consideration.
14. After I had given judgment, I advised the claimant, of my own initiative, of his rights to apply for a preparation time order. That, and other procedural steps, are dealt with in a separate case management order.
15. I apologise for the delay in sending out these reasons, which is in large part due to the present lockdown.

7 April 2020

Employment Judge R Lewis

Sent to the parties on:

21 April 2020

For the Tribunal:

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