



EMPLOYMENT TRIBUNALS

Claimants

(1) Ms E Deocampo
(2) Ms S Esteves

v

Respondent

Mr Orlando Williams T/A Sakura

Heard at: Norwich

On: 18 March 2020

Before: Employment Judge Postle

Appearances

For the Claimants: Mr Raffel (Litigation Executive).

For the Respondent: Miss Forman (Counsel).

RESERVED JUDGMENT ON AN APPLICATION BY THE RESPONDENT FOR A RECONSIDERATION

1. The claimants' Judgments of 4 July 2019 and 5 July 2019 are revoked.
2. An extension of time be granted to the respondent of 28 days from the date this Judgment is sent out to the parties in which for the respondent to file a full response.

REASONS

1. The claimants had entered claims against the respondent in the Employment Tribunal on 1 February 2019 following a period of early conciliation. No response was entered by the respondent and consequently Judgment in default for both claims was entered on 4 and 5 July 2019 respectively.
2. The respondent's application for a reconsideration of the Judgment was not in fact received by the Tribunal until 12 August 2019 which of course was outside the 14 day time limit set out under rule 71 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The application to reconsider the Default Judgments outside the 14 day time limit is granted by an extension of time.

3. In this Tribunal we have had the benefit of a bundle of documents provided by the respondent consisting of some 77 pages. The Tribunal have also had the benefit of skeleton argument on behalf of the respondent and the claimants' response in writing to the respondent's application for a reconsideration of the Judgments. The Tribunal is grateful to both representatives for preparing such documents.
4. The Tribunal then heard evidence through a prepared witness statement from Mr Williams, and likewise from both claimants also through prepared witness statements.
5. In the interests of the overriding objective and given limitations on time today it was accepted that the respondent's counsel would not cross examine on all points rising from the claimants' witness statements and would concentrate on the relevant areas in relation to this application. It was also accepted by not cross examining the claimants on all points in their witness statement it was not accepted by the respondent the allegations laid out by the claimants were true.
6. The first claimant Ms Deocampo made claims for unlawful deduction from wages allegedly for August, September and November 2018 following what she states is the commencement of her employment with the respondent on 13 August 2018. The claimant asserts on 31 October 2018 that two policemen came to the respondent's place of business which is said to have been a restaurant and/or bed & breakfast and informed the respondent he had to cease operating the business because he did not have the appropriate trading licences. As a result of this Ms Deocampo submitted her resignation on or around 1 November with the intention to work what she says was a full contractual notice period of one month. This claimant claims she is owed 3 weeks' pay in August amounting to £1,485, one months' pay in September amounting to £1,980 and 1 weeks' pay in November amounting to £495. The claimant also asserts that she is entitled to accrued holiday of £671.90.
7. In relation to the claim by Ms Esteves, she asserts she commenced employment with the respondent on 21 October 2018 in the position of Chef and that there was an agreement that she could live on the premises rent free. Ms Esteves continued to do so until 13 December when she went on annual leave, the respondent apparently informed the claimant that she could continue to take annual leave until 20 December – the date the business was due to re-open. However, on 24 December the claimant received a letter from the respondent terminating her employment. The letter apparently states that the claimant's last working day would be 31 December which the claimant asserts contravenes her employment contract which stated one months' notice. Further the claimant asserts that the respondent made the deduction of £225 from the claimant's wages in respect of 3 months' rent. The claimant therefore claims one 1 months' notice pay of £1,680 and an unlawful deduction of wages in the sum of £225.

8. There is some common ground in the case as the respondent accepts that with Ms Esteves claim the deduction for rent namely £225 is unlawful and is due to her therefore it is hoped in the intervening period Mr Williams will make good that sum. However, he disputes the notice pay.
9. In relation to Ms Deocampo, it is accepted the payment of the claimant's October salary of £1,980 is due, again it is hoped in the intervening period Mr Williams will make good this sum. The respondent also accepted the entitlement to holiday pay is accepted in principle but the difficulty is the length of the claimant's employment. Particularly the respondent asserts that the employment commenced on 1 October 2018, whereas the claimant asserts her employment commenced on 13 August 2018.
10. Following the claims being issued Mr Williams emailed the Employment Tribunal on 6 March 2019 requesting more time until 16 March 2019 to respond to the claims. However, no such response was received.
11. The claimants therefore applied for default judgments on 22 March and 23 March 2019 at which point the respondent replied on 26 March to say he was having health problems and had been away abroad from 25 February 2019 to 15 March 2019.
12. Apparently, the claimants again waited for a response to the claim, in the absence of any response applied for the default judgments again on 17 May 2019. At this point the respondent Mr Williams replied by email on 20 May 2019 to say he was recovering from a stroke and finding communication difficult.
13. The Tribunal issued Judgments on 4 and 5 July 2019.
14. It would appear the claim was sent to the respondent's correct address and the respondent, Mr Williams is not alleging that he did not receive it. It would appear that the respondent, Mr Williams only became really active when faced with the court enforcement officers attending his premises to recover the sums due under the Judgment debt. He told the enforcement officers that he was having difficulty dealing with paperwork and day to day tasks. It would appear Mr Williams is running a bed & breakfast in the meantime.
15. On 7 August 2019 Mr Williams arranged for a medical report from a GP to be sent to the Watford Employment Tribunals, the relevant part read as follows:-

“Mr Williams had a stroke on 12 December 2012 and that left him with residual expressive (difficulty in comprehension) and receptive (difficulty in putting words together to make meaning) dysphasia, which was initially rather significant and severe, but gradually improved with input from the Post Stroke Rehabilitation Team and Speech & Language Therapists. However since his stroke he has been left with ongoing problems communicating with people either face-to-face on the telephone or otherwise, due the residual expressive and receptive dysphasia, cognitive impairment, word finding difficulties,

concentration and memory issues. These difficulties seem to have led to various communication problems with various agencies over the years, including some communication issues with his previous employee whose case came before you in court on 5 July ...”

16. On the same day Mr Williams wrote to the Tribunal, 12 August 2019 requesting that the Judgments be reconsidered citing a number of issues in particular:-
 - 16.1 He paid both claimants wages in full.
 - 16.2 Ms Deocampo was employed as a manager who did the wages and that he had been unable to file a request for reconsideration of the Judgment due to medical reasons.
17. Finally, the Tribunal were given notice on 19 November 2019 that he had instructed solicitors and on 21 November 2019 he set out in some detail the background and the reasoning for the application, and the respondent’s medical difficulties.

The Law

18. The power arises under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, particularly rules 70 and 72, and clearly a factor that should always be borne in mind in deciding whether to revoke or not is whether it is in the interests of justice.
19. Clearly the explanation for the delay which has necessitated the application for an extension is going to be an important factor in the Tribunal deciding whether to exercise its discretion. The reason for the delay must be explained, whether there are any exceptional circumstances. One also has to consider prejudice to be suffered by either party if it refuses the application or indeed revokes the claimants’ default judgments.
20. I remind myself of further Employment Tribunal rules, namely the overriding objective under rule 2 to deal with cases fairly and justly. Dealing with a case fairly and justly includes, insofar as practicable:-
 - “a. Ensuring that the parties are on an equal footing;
 - b. Dealing with cases in ways which are proportionate to the complexity and importance of the issues;
 - c. ...
 - d. Avoiding delay, insofar as compatible with proper consideration of the issues; and
 - e. Saving expense.”

Conclusions

21. It is clear that the respondent suffered a stroke in 2012 and that has had a lasting effect on the respondent, Mr Williams. There is medical evidence from his GP supporting the fact that he has difficulty comprehending and understanding and dealing with correspondence and communication. Whilst I have some reservation as to the extent of those difficulties bearing in mind the respondent seems to be able to engage in some sort of bed & breakfast/restaurant business, nevertheless I am satisfied that, they may have played a part in his ability in dealing with the claims.
22. I am also satisfied that the respondent did engage with ACAS in explaining his health difficulties but it appears that may have fallen on deaf ears.
23. There is also some dispute as to the extent of the claimants' claim albeit there are some admissions by the respondent in what is lawfully due to claimants, it is hoped as I have already said that this is discharged in the intervening period.
24. On balance I have been persuaded there are proper grounds for exercising my discretion to revoke the Default Judgments.
25. The case will therefore be listed for a full merits' hearing with a time estimate of half a day on the first available date in October 2020. The parties' representatives to liaise with Listing in Watford with their available dates.

Employment Judge Postle

Date: ...30 April 2020.....

Sent to the parties on: .1 June 2020.....

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For the Tribunal Office