



EMPLOYMENT TRIBUNALS

Claimant: Ms M De Pedro Al Mela
Respondent: Smileright Dencare Limited
Dated: 11th June 2020
Before: Employment Judge A Frazer

RECONSIDERATION

Having considered the respondent's application for reconsideration under Rule 70 of the Tribunal's Rules of Procedure 2013 I refuse to revoke the judgment to grant the Claimant a preparation time order made on 28th October 2019. However, having considered all the circumstances I vary it to limit the amount payable to the Claimant as her travel expenses for attendance on that date only.

REASONS

Introduction and Background

1. The Claimant brought a claim for unlawful deduction from wages on the basis of her engagement with the Respondent as a dentist. The matter was listed for a preliminary hearing on 28th October 2019. The Claimant and the Respondent were informed by the Tribunal that there Newport Road was closed on that date. The parties were notified of the hearing in advance by the Tribunal. The Respondent did not attend and informed the Tribunal on the day that this was because Mr Quail of the Respondent had made an error and got the date wrong. He had not apologized to the Claimant for his non-attendance. I considered that this was unsatisfactory. This consideration formed the basis of the preparation time order owing to the fact that the Claimant had herself attended and prepared for the hearing. I directed her to file a schedule.

2. On 24th November 2019 Mr Quail wrote to the Tribunal requesting a reconsideration of my decision. He stated that the email address that the Tribunal had used to inform him that Newport Road would be closed was the wrong one and he did not learn of this until 30th October 2019 from the Tribunal and after he had contacted the administration to inform them of the error. He also represented that he had apologised to the Claimant for his non-attendance subsequent to the hearing. The Claimant filed a schedule claiming £923.55 for her expenses and preparation time.
3. The parties both attended before EJ Harfield on 24th February 2020. At that hearing the Claimant conceded that she was neither a worker nor an employee for the purposes of Employment Rights Act 1996. EJ Harfield struck the claim out on the basis that it had no reasonable prospects of success.

The relevant rules on reconsideration

1. Applications for reconsideration are governed by Rules 70 to 73 of the Tribunal's Rules of Procedure 2013.
2. Rule 70 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". Following a reconsideration, a judgment may be confirmed, varied or revoked (and, if revoked, it may be taken again).
3. Rule 72 describes the process by which an application for reconsideration should be determined. The application should, where practicable, first be considered by the Employment Judge who made the original decision or who chaired the full tribunal that made the original decision. Rule 72(1) requires that judge to refuse the application if he or she "considers that there is no reasonable prospect of the original decision being varied or revoked". If the judge considers that there is a reasonable prospect of the original decision being varied or revoked, the Rules go on to provide for the application to be determined with or without a further oral hearing.
4. This document sets out my consideration of the respondent's application under Rule 70(1).

Conclusion

5. The conduct to which the preparation time order relates is the Respondent's non-attendance at the hearing on 28th October 2019. I have considered all of the circumstances very carefully including the fact that the Claimant's claim was struck out for having no reasonable prospects of success upon her concession that she was self employed. I consider that on this basis there is a reasonable prospect of the order being varied.

6. I remain of the view that there was no reasonable excuse for Mr Quail's non-attendance at the hearing on 28th October. He accepted that he had made a mistake as to the date of the hearing. Whether Newport Road was closed was irrelevant as he would not have attended on 28th anyway. He did not say in his application that he had not received the notice of hearing. Therefore I do not consider that there is a reasonable prospect of the order being revoked.
7. However, on the basis that the Claimant's application had no reasonable prospects of success, I consider that the preparation time order should be limited to her travel expenses. Therefore the preparation time order shall stand but shall be varied accordingly. The sum payable to her by the Respondent shall be limited to the sum of her £12.55 rail ticket.

Employment Judge A Frazer
Dated: 11th June 2020

SENT TO THE PARTIES ON 12 June 2020

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FOR THE SECRETARY OF EMPLOYMENT
TRIBUNALS