



EMPLOYMENT TRIBUNALS

Claimant: Mr S Gul
Respondents: Pendergate Limited t/a Ridge Crest Cleaning Services (1)
Regent Office Care Limited t/a Regent Samsic (2)

Decided on the papers

On: 29 May 2020

Before: Employment Judge Adkinson sitting alone

RECONSIDERATION JUDGMENT

1. The claimant's application of 6 May 2020 for a reconsideration of the judgment dated 1 April 2020 (and sent to the parties on 6 April 2020) is dismissed because it is out of time.

REASONS

2. The claimant has presented two claims to the Tribunal. They relate to claims for unpaid wages because he was paid less than the national minimum wage, holiday pay and unfair dismissal both because of his assertion of his right to national minimum wage ("the automatic unfair dismissal claim") and for ordinary unfair dismissal as well. There was also a claim relating to a deposit in respect of a uniform ("the deposit claim").
3. On 7 February 2020 Employment Judge Robert Clark conducted a case management hearing by telephone. The claimant took part in that hearing. He was supported by a Mr Umarji.
4. Judge Clark was of the impression the Tribunal did not have jurisdiction to consider the deposit claim. He ordered the claimant to explain why he thought the Tribunal could deal with the claim. In default that part would be dismissed.
5. Judge Clark concluded that the Tribunal needed further information to explain the basis for the automatic unfair dismissal claim. He clearly concluded it was unclear from the claims that the claimant had presented. For what it is worth, I agree. Judge Clark spelt out what specific information

the claimant had to provide. He made it clear that the information had to be provided to both the respondents and to the Tribunal.

6. Judge Clark also directed the claimant to provide a schedule of loss.
7. These orders were set out in paragraphs 3, 4 and 5 of his Order. The deadline for each order was 28 February 2020. He made these orders in the parties' presence by telephone.
8. He also wrote them down, with a case summary of what the case was about and what they had discussed. The Tribunal sent them to the parties on 11 February 2020.
9. The claimant did not send any representations explaining why the Tribunal could deal with the deposit claim.
10. The claimant did not send any of the further information that Judge Clark asked him to send in relation to the automatic unfair dismissal claim.
11. Judge Clark at the same time listed the claims for a final hearing in June 2020.
12. On 6 March 2020 the second respondent applied for the claims to be struck out. This was based on the fact that the claimant had not provided the further information relating to the automatic unfair dismissal claim. They said the lack of information hindered their preparation.
13. The Tribunal has received nothing either.
14. In consequence, Employment Judge Britton issued a warning that the claim would be struck out because it was not actively being pursued. He allowed the claimant until 18 March 2020 to either make representations or request a hearing. The warning was sent on 11 March 2020.
15. The claimant did not respond to that warning. Until the application of 6 May 2020, the claimant has not communicated with the Tribunal at all.
16. Both the order and warning were sent by post to the address the claimant had provided and which in his application the claimant identifies as his address still.
17. On 1 April 2020 I considered the file. The claimant had still not complied with Judge Clark's order to provide further information. The claimant had not responded to the warning in any way. There was no reason to believe he had not received the correspondence or orders. He was in any event present took part in the hearing at which Judge Clark made those orders. I struck the claim out therefore. The delay was "contumelious" (i.e. disrespectful or abusive to the Tribunal), or alternatively it was inordinate and inexcusable delay and the lack of clarification of the automatic unfair dismissal claim meant that it was likely to cause serious prejudice to the respondent.

Is the application is out of time and if so whether time should be extended?

18. **Tribunal rule 71** says that
"...[A]n application for reconsideration... shall be presented in writing... within 14 days of the date on which the written record, or other written

communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later)..."

19. **Tribunal rule 5** allows the Tribunal either on its own initiative or on application to extend time even after expiry of that time.
20. I have read the application carefully. However, it does not explain or provide any information that might indicate why the application was not made within 14 days of the Tribunal sending the judgment to the parties. For example, there is no suggestion that there were delays in receipt, illness or any other incapacity or difficulty that prevented the claimant from making his application.
21. I note the application does not explicitly request me to extend time but I can do anyway. However, in order for me to do I believe there must be some evidence of some circumstances that would justify me exercising my discretion. There is none.
22. Based on what I have available to me, I conclude that I did extend time I would not be furthering the overriding objective in **Tribunal rule 2** because to do so
 - 22.1. would be disproportionate to the importance and complexity of the issues,
 - 22.2. would increase delay in treating this case as resolved, and
 - 22.3. would put the respondent to increased expense dealing with the application for a reconsideration.
23. It would also undermine the Tribunal's own rules.
24. That is sufficient to dispose of the application. But I have considered the substance in any case.

Whether there is any reasonable prospect of revocation of my original decision?

25. **Tribunal rule 72** requires me to dismiss an application for a reconsideration if I consider there is no reasonable prospect of the judgment being varied or revoked.
26. In my judgment, there is no there is no reasonable prospect of the judgment being varied or revoked.
27. I have considered the application carefully.
28. The application does not explain in any way why the claimant failed to abide by the Tribunal's orders that were made by Judge Clark at the hearing the claimant attended by telephone.
29. The application does not incorporate any information that remedies his failure to comply with the order. The application does not contain any proposals as to how he might remedy his failure to abide by Judge Clark's order.
30. Moreover, I am concerned that in fact he still would not comply with Judge Clark's order if I did set aside the judgment and revised the deadlines. He writes "I do stand by my statement and the fact that I provided in relation to their work practices." As Judge Clark pointed out though, the information

he provided does not address what is the major part of his case. That is why the Tribunal ordered him to provide further information. His statement suggests he does not believe that he needs to comply with the order. That is not correct.

31. I acknowledge that he is entitled to a fair decision. So are the respondents. Fairness of any hearing requires both parties to abide by the Tribunal's directions and to actively take part. The claimant was instructed what information to provide and by when. He was forewarned that his claim was in danger of being struck out. He did not act. It is fair therefore to stop a claim that is not actively being pursued.

Employment Judge Adkinson

Date: 29 May 2020

JUDGMENT SENT TO THE PARTIES ON

11 June 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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