



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr C Ward

AND

Creative Production Services Limited

Heard at: CVP (Video Hearing)

On: 28 August 2020

Before: Employment Judge Adkin

Appearances:

Claimant: Mr Ward in person

Respondent: Mr Watson & Mr Bennett, Directors

JUDGMENT

The Judgment of Employment Judge Adkin dated 27 April 2020 is **revoked** under Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 (“the Rules”).

REASONS

1. I reconsidered my earlier judgment under the power in rule 70 of the Rules on my own initiative, in the interests of justice, based on matters drawn to my attention initially in correspondence from the parties and subsequently in today’s hearing.
2. I have the power to reconsider a judgment when it is in the interests of justice to do so. If the Respondent did not receive the Notice of Claim for

the present proceedings, this is a good reason in my assessment for revoking the earlier judgment which was issued in default of a response/ET3, and allowing the Respondent to defend.

Respondent's position

3. The Respondent in this matter maintains that the first that they became aware that there was a claim in the Employment Tribunal was 2 March 2020, by which point, they had missed the deadline for presentation of a response to the claim by a number of months, given that the deadline was 5 December 2019. The Claimant has articulated reasons to suggest that the Respondent was aware that there was a live claim as early as November 2019, and in time to present a response before the deadline.
4. I have had the benefit of Mr Ward, Mr Watson and Mr Bennett giving their account on today's video hearing of events particularly in relation to the question of whether the Respondent received the Notice of Claim and Claim Form. Each gave their version of events and was subject to questioning by myself and questioning by the other side.
5. In preparation for this hearing I considered the Respondent's emails of 7, 9, 29 July 2020 and 31 July 2020 and the Claimant's email of 30 July 2020, to which there were a number of attachments. Of particular relevance was Section E.
6. I received in evidence a short handwritten witness statement from Mrs J. Shields dated 19 August 2020. She is Mr Watson's mother. She did not attend the hearing or give oral evidence.
7. The Respondent says that they were told all letters were sent back to sender between August 2019 to June 2020 in an error by the property owner (Mr Watson's mother) and that they never normally receive letters. They say they have only received emails but not letters from the Tribunal. The Respondent was incorporated on 1 January 2019, using Mr Watson's mother's address.

Claimant's position

8. The Claimant strongly opposes the suggestion that my earlier judgment should be revoked. He considers that the Respondent was aware of the litigation at the time when the response should have been presented.
9. The Claimant has invited me to consider "without prejudice" correspondence. I have considered whether it is appropriate for me to review this. Ordinarily the purpose of such communication is to allow parties to communicate with each other with a view to settling a dispute without the risk that this is going to be placed in front of the judge deciding the matter. I am not for the purposes of this reconsideration making a substantive decision on liability. Rather I am examining whether due to the Respondent stating that they did not see the Notice of Claim the existing

judgment should be set aside and the Respondent able to put in a substantive defence to the claim.

10. I find that it is appropriate for me to examine this without prejudice correspondence for this purpose. The substance of any without prejudice proposals are not relevant for present purposes. It is the dates, context and reference to the dispute which are relevant.
11. Having considered this correspondence it would not be appropriate for me to be the judge who makes a decision on the substance of the claim in due course.

Findings of fact

12. I explained to the parties that I made findings on the balance of probabilities, based on what I consider is most likely to have happened.
13. A summary of the chronology is as follows:
 - a. An ACAS early conciliation certificate was sent to the Respondent at the 29 Hereward Close address with a date of issue of 28 August 2019 and a date of notification of 7 August 2019.
 - b. The ET1 claim form was received by the tribunal on 28 October 2019. The claims brought were unpaid wages as well as claims of age discrimination, sexual orientation discrimination, unfair dismissal and automatically unfair dismissal due to a protected disclosure (i.e. whistleblowing).
 - c. The Notice of Claim was sent to the parties on 7 November 2019. The deadline for the Respondent to respond was 5 December 2019. At this stage Mr Bennett was working in China, although in communication with the Claimant about resolution of a breakdown in the working relationship between the Claimant and Respondent. Some (if not all) of this communication was by Snapchat, a social media platform. Mr Watson was in the UK, although by this stage not living with his mother at the Respondent's registered address (29 Hereward Close, Impington, Cambridgeshire).
 - d. On 13 November 2019 Mr Bennett on behalf of the Respondent sent a without prejudice proposal to the Claimant. This email makes no reference to the actual claim or a claim number. It begins "we find ourselves in this unfortunate position but it is clear that we cannot work together and we need to reach some form of agreement to terminate the contract dated the 30 August 2019." Part of the proposal is that neither party to the contract should pursue claims against the other. There is no reference to a live claim or the withdrawal of an existing claim. Mr Bennett at this stage was aware that there was a dispute between the parties. He was not aware that there was a live claim presented to the Tribunal.

He says that the without prejudice letter was sent to the Claimant after he had taken advice from a solicitor on how to settle a dispute.

- e. On 23 November 2019 the Claimant replied, also on a without prejudice basis. In this email he referred to "A request was made by ACAS to yourselves to enter into arbitration regarding the outstanding payments which you refused". I do not have the precise content of any communication between ACAS and the Respondent. On balance I consider this is likely to have been a communication during the conciliation period, rather than a communication about a live Tribunal claim.
- f. A letter was sent from the Tribunal, again to the address 29 Hereward Close, Impington dated 9 December 2019 indicating that no response had been provided and suggesting that a default judgment would be issued, with the opportunity for the Respondent to provide information if the response had been sent by 16 December 2019. No response was received.
- g. On 2 March 2020 the Claimant wrote an email to the Tribunal, copying in both Mr Bennett and Mr Watson of the Respondent. This referred to a hearing and to the case number, and attached a agenda for Case Management at a Preliminary Hearing and an evidence pack. This was the first point at which the Respondent became aware that there was a claim.
- h. No action was taken by the Respondent to apply to the Tribunal to enter a response out of time. Plainly it should have done. On balance I have concluded that this is because the Respondent is a very small company without the resources of a Human Resources department, and also because Mr Bennett felt, wrongly as it turns out, that it may still be possible to resolve the dispute.
- i. A further letter was written from the tribunal on 3 March, postponing a hearing due to take place on 4 March 2020. This again was sent to the address at 29 Hereward Close. The Claimant had already unfortunately purchased train tickets on an advanced basis and also an hotel room to attend this hearing which did not take place.
- j. On 9 March 2020 Mr Corey Bennett of the Respondent emailed the Claimant with a without prejudice proposal. At this stage the Respondent admits that they were aware of the claim.
- k. On 23 April 2020 I gave judgment for the Claimant in his claim for unpaid wages in the sum of £2,597.50. In a separate case management order on the same date I directed that the Claimant should provide further particulars of his remaining claims by 19 May 2020. Both of these were sent to the Claimant by email on 27 April 2020. The judgment was also sent by post on 27 April 2020. It is not clear to me that the case management order was also sent by post.

- l. The Claimant confirmed to me at today's hearing that he did not receive this case management order which explains why no further particulars of his remaining claims were supplied.
- m. On 17 June 2020 when the Claimant emailed the Respondent (copying the Tribunal) with an invoice for the sum set out in the judgment. An email was sent by the Tribunal on this date asking the parties not to copy the tribunal in to correspondence between themselves.
- n. On 2 July 2020 Mr Bennett on behalf of the Respondent wrote (without copying the Claimant) this "I have tried several times to email however it seems that I our [sic] work email system has stopped working. I have been informed by Mr Ward that there has been additional monies awarded to him. Could you confirm if this is the case? And the total monies that are owed and if any liability. Outside of the company and onto the directors? It seems as though our post hasn't been reaching us, I know this sounds very suspect, but I can honestly say that we have never received any information from the courts via post, only via email. Our address is correct on companies house and on letters attached to the creative – productions.co.uk domain. If it is the case that the additional monies have been ordered, please can I appeal this?" Mr Watson explained to me at today's hearing, and I accept that the Respondent carried out its correspondence almost exclusively by email.
- o. On 7 July 2020 Mr Bennett wrote a further letter to the Tribunal (although I note that this was not copied to the Claimant as it ought to have been) In this letter he says "We were happy to pay the loss of earnings as a gesture of good will, even though HMRC agree that Mr Ward was not an employee of CPS Ltd... He was self-employed working as a Production Manager for 4 weeks." he later mentions a hearing about discrimination. He said we have not received any information about discrimination and that the registered office had never received any letters regarding this. He signs off "The only judgment we were aware of was the judgment back in April. We have not been informed about any other judgment regarding harassment/discrimination.
- p. On 17 July 2020 the Respondent's email dated 7 July 2020 was forwarded by the Tribunal to the Claimant, inviting comments on a proposal to revoke the earlier judgment.
- q. On 29 July 2020 Mr Watson on behalf of the Respondent forwarding correspondence from the Claimant.
- r. On 30 July 2020 the Claimant emailed the Tribunal strongly opposing the proposal to revoke the earlier judgment, arguing that

the Respondent has been aware of the proceedings throughout, with a series of appendices in support as referred to above.

Conclusion

14. It is plain that the Respondent was aware that there was a dispute in general terms between it and the Claimant. The Respondent was aware of the existence of a live claim against it by the Claimant's email of 2 March 2020. Of course by this stage the deadline of 5 December 2019 was long gone.
15. On balance I found that in the circumstances of the Respondent being a very small operation, using Mr Watson's mother's address as registered address, when he no longer lived there, set the stage for the Notice of Claim not to reach the Respondent. I find that the Notice of Claim dated 7 November 2019 did not come to the attention of the Respondent's directors. I accept that the first time the Respondent was aware of the claim against it was as a result of the Claimant's email of 2 March 2020. In those circumstances I consider it is in the interests of justice that my earlier judgment dated 27 April 2020 be set aside.
16. I have provided directions below for the Claimant to further particularise parts of his claim, as originally ordered on 23 April 2020.
17. As to the Respondent presenting a response out of time, while I have given a date for a draft response to be presented, the Claimant has the right under rule 20(2) to give reasons in writing within seven days why the application for extension of time is opposed. I consider it is important that he has this opportunity to make any further points, before I decide whether this response should be accepted, which I will confirm at the case management hearing listed in October.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Further particulars of claim

- 1.1 By **18 September 2020** the Claimant shall provide to the Tribunal (copying the Respondent) further particulars of the discrimination and protected disclosure claims as originally ordered on 23 April 2020 (order attached).

2. Judicial mediation

- 2.1 The parties are referred to:
<https://www.gov.uk/government/publications/judicial-mediation-at-employment-tribunals-england-and-wales-t612>
- 2.2 They must inform each other and the tribunal in writing by **25 September 2020** whether or not they are in principle interested in judicial mediation and if not, why not.

3. Response

- 3.1 By **16 October 2020** the Respondent shall provide to the Tribunal (copying the Claimant) a draft response (ET3), in which they clearly specify matters that are agreed (including any sums agreed to be owed to the Claimant) as well as matters that are disputed.
- 3.2 The Claimant may by **23 October 2020** make any submissions in writing on whether time should be extended pursuant to rule 20 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1.

4. Preliminary Hearing (Case Management)

- 4.1 Parties shall attend a Preliminary Hearing on **29 October 2020** at 10AM (2 hours) by CVP (video link), joining details to be provided, to determine the following:
- 4.1.1 Whether time should be extended to accept the response provided;
- 4.1.2 Case management, defining the issues in dispute between the parties and listing a hearing.

Employment Judge Adkin

Dated:04/09/2020

Sent to the parties on:

04/09/2020.

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For the Tribunal Office