



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Gemma Milne

AND

Respondent

Keith Webb trading as The Saddler's Arms

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth **ON**
By Cloud Video Platform CVP+

26 October 2020

EMPLOYMENT JUDGE N J Roper

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the respondent's application for reconsideration is allowed and the Judgment dated 31 October 2019 is revoked.

REASONS

1. The respondent has sought a reconsideration of the judgment entered under Rule 21 dated 31 October 2019 which was sent to the parties on 1 November 2019 ("the Judgment"), and has made an application for an extension of time to serve its response. The grounds are set out in its e-mail letter dated 2 December 2019. That letter was received at the tribunal office on 2 December 2019.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2015 ("the Rules"). Under Rule 21(2) judgment can be issued where no response has been presented within the time limit in Rule 16, or a response has been rejected and no application for reconsideration is

- outstanding, or the respondent has stated that no part of the claim is contested.
3. Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.
 4. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
 5. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
 6. The grounds relied upon by the respondent are these. The claimant issued these proceedings alleging discrimination on the grounds of pregnancy/maternity on 4 October 2019, naming as the respondent Mr Keith Webb trading as the Saddler's Arms at an address in Teignmouth in Devon. The claim was served at that address by the Tribunal office on 22 October 2019, requiring a response by 19 November 2019. The papers were then returned to the Tribunal Office marked "unknown at that address", and on 30 November 2019 a referral was made for judgment to be entered under Rule 21. I entered the Judgment under Rule 21 on 31 October 2019.
 7. The parties now agree that the correct name of the respondent is Mr Keith Webb, Mrs Linda Webb, and Mr Tim Brookes in partnership together as Webb Enterprises Partnership, trading as the Saddlers Arms. The Saddlers Arms is at an address at Lymphstone near Exmouth, and is not in Teignmouth. Mr Webb was unaware of these proceedings, and unaware of the Judgment, until he was telephoned on 27 November 2019 by way of a cold call from a company offering to represent him at the forthcoming Tribunal hearing. He immediately instructed solicitors, who made an application by letter dated 2 December 2019 which explained the above circumstances, and which also included a proposed response to the claim which raises an arguable defence.
 8. Under the previous Rules of Procedure (relating to the review of what were called Default Judgments) the EAT gave guidance on the factors which tribunals should take into account when deciding whether to review a default judgment in Moroak t/a Blake Envelopes v Cromie [2005] IRLR 535. The EAT held that the test that a tribunal should apply when considering the exercise of its discretion on a review of a default judgment is what is just and equitable. In doing so, the EAT referred to the principles outlined in Kwik Save Stores Ltd v Swain and others [1997] ICR 49.
 9. In the Kwik Save decision, the EAT held that "... the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice". The case established that an Employment Judge should always consider the following three factors. First, the explanation supporting an application for an extension of time. The more serious the delay, the more important it is that the Employment Judge is satisfied that the explanation is honest and

- satisfactory. Secondly, the merits of the defence. Justice will often favour an extension being granted where the defence is shown to have some merit. Thirdly, the balance of prejudice. If the employer's request for an extension of time was refused, would it suffer greater prejudice than the employee would if the request was granted?
10. This guidance in Kwik Save was approved by reference to the subsequent 2013 Rules in Office Equipment Systems Ltd v Hughes UKEAT 0183/16/JOJ.
 11. I have also considered the case of Pendragon Plc (trading as C D Bramall Bradford) v Copus [2005] ICR 1671 EAT which confirms that in conducting a reconsideration of a Rule 21 Judgment (formerly a review of a default judgment under the previous Rule 33) an Employment Judge has to take account of all relevant factors, including the explanation or lack of explanation for the delay and the merits of the defence, weighing and balancing the possible prejudice to each party, and to reach a conclusion that was objectively justified on the grounds of reason and justice.
 12. Applying these principles in this case, I find that the claimant's claim was inadvertently served at a wrong address, and did not fully or accurately name the correct respondent. I accept that the respondent was unaware of these proceedings and the Judgment until the end of November 2019, and immediately made an application for reconsideration of the Judgment and for late acceptance of the proposed response. That response raises an arguable defence to the claimant's claim.
 13. Balancing the potential prejudice to either party, the greater prejudice would lie in allowing the Judgment to stand because the respondent would have been deprived of its right to defend the claim. By revoking the Judgment the respondent has an opportunity to defend the claim, and although the claimant is deprived of the Judgment at this stage, nonetheless the claimant still has the ability to pursue her claim through to a full hearing the same. In my judgment it is clearly in the interests of justice to allow the respondent to defend this claim.
 14. Accordingly, I allow the application for reconsideration pursuant to Rule 70 and the Judgment is hereby revoked. I also allow the application for an extension of time and the respondent's response is accepted. Case management orders will follow so that the matter progresses.

Employment Judge N J Roper
Dated 26 October 2020