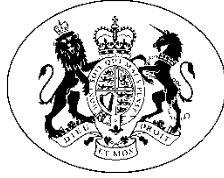

EMPLOYMENT TRIBUNALS

Claimant: Mr John Juniper

Respondents: (1) Stripe 21 Ltd (in voluntary liquidation)
(2) Stripe 21 Group Ltd
(3) Mr Stephen P North
(4) ISDNTOVOIP Ltd (formerly Stripe 21 VN Ltd; in voluntary liquidation)

CONSIDERATION OF APPLICATION FOR RECONSIDERATION OF JUDGMENT

Introduction

1. I gave an oral decision in this case at a CVP hearing on 11 November 2020. Following promulgation of my written judgment, the claimant made a request for written reasons, which were duly given. (Below, I use the same abbreviations as in those written reasons.) By a letter dated 15 December 2020, the claimant applies for reconsideration of my judgment, pursuant to r.70 of Sch. 1 to the ET Regs.

Unfair and wrongful dismissal/unlawful deductions

2. I do not consider there is a reasonable prospect of the original decision being varied or revoked in relation to the above claims.

3. I make the following observations in response to points the claimant makes in his 15 December letter:
    a. **Strike out of respondents**: The claimant asserts that I should have made a strike out order because of non-compliance by the respondents with tribunal orders. However:

i. The claimant did not apply for a strike out order at the hearing. Nor did he ask for additional time e.g. to digest R3's (3 page) 10 November 2020 witness statement.
ii. The claimant did not suggest that paperwork which could have made a material difference had not been disclosed. (I was provided with a sizeable bundle.)
iii. R3 ought to have provided a witness statement sooner, and/or applied for directions, in accordance with previous tribunal orders[1]. But the evidence which R3 gave in his statement was consistent with and contained in R3's grounds of resistance.
iv. The claimant suggests R2's defence ought to have been struck out for failure to exchange witness statements on 31 October 2019. But "New Evidence Doc 1" shows R2's representative offering on Friday 30 October 2020 to exchange statements on 4 November (which offer the claimant declined). So, I do not think that "New Evidence Doc 1" -even if the claimant had showed it to me at the hearing- would have made a material difference.

b. **"Equal liability" of R2**: The claimant appears to suggest that "New Evidence Doc 2" was not made available to me to "make an informed decision" on R2's "equal liability" with R1 as his employer.
c. If the claimant thought I ought to have seen that document (dated 12 June 2019), he could have taken me to it at the 11 November 2020 hearing.
d. "New Evidence Doc 2" is an application to join R2 and R3 to the claim. Those respondents were both duly joined by the tribunal, on 18 September 2019. I do not see how it alters my finding as to the identity of the claimant's employer (with which finding the claimant appears to agree in his 15 December letter).
e. Similarly, the claimant has not explained how "New Evidence Doc 3" (dated 4 September 2020) could not have been submitted by him at the November 2020 hearing.

[1] The claimant suggests in his 15.12.20 letter that at the hearing on "8th May 2020" [sic- should be. 8.6.20], EJ Cheetham QC said R3 "would not be participating in the Remedy". In fact, albeit the judge at that hearing did not anticipate that R2 or R3 would participate (because it seemed clear to him that neither R2 or R3 could be C's employer), he stated it was "not clear yet" whether or not R1 or R4 would participate. He made directions, should they choose to do so. R3, with the agreement of the liquidator, gave evidence on behalf of R1.

f. I do not in any event consider "New Evidence Doc 3" would have made a difference:
    i. The document shows R3 held shares in R2- which was not disputed by R3.
    ii. The claimant did not advance any proper basis for asserting (and did not assert before me or Employment Judge Cheetham QC) that R2 was his employer, jointly with R1 or otherwise.
    iii. On the paperwork that I saw, any such argument would have been doomed to fail -amongst other things, because R2 was incorporated some time after the EDT.

g. The mere fact R2 might have been better able to satisfy a judgment than R1 or R4 – both of which were in voluntary liquidation- did not give a sound basis for the claim against R2 to continue.

h. **Unlawful deductions**: As for the unlawful deductions claim, I do not think there is any realistic prospect of my original decision being varied, given my factual findings as set out at paragraph 15 of my written reasons. ('Evidence Doc 5' is an email from Mr Hynes which postdates the 11 November 2020 hearing.)

i. **ACAS uplift:** As regards the claimant's submissions regarding an ACAS uplift for alleged refusal to allow witnesses for his (pre-dismissal) grievance, this (and 'New Evidence Doc 6') is something which could have been raised by him at the 11 November hearing. It was not. In any event, as I did not make any award in relation to the unlawful deductions claim the point is academic- there was no pre-dismissal compensation to 'uplift'.

Age discrimination

4. As regards the age discrimination claim against R1, I propose to reconsider my decision on the substantive merits, on the basis that the substantive merits ought to have been a matter for determination by a full tribunal (rather than a judge sitting alone), if the tribunal had jurisdiction to hear the claim.

5. I am therefore minded to revoke my decision on the substantive merits of the age discrimination claim, and order for there to be 3 hour open preliminary hearing ("**OPH**") before a judge sitting alone to decide whether or not the age

discrimination claim should be struck out on the basis that it is out of time. (If it is not out of time, any further directions for a hearing on the merits can be made at the OPH.)

6. I have, of course, already made findings on whether or not the claim is out of time. See paragraph 13 of my written reasons. But in fairness to the claimant, and because he did not have advance notice that the issue would be decided at the 11 November 2020 hearing, I think it may be appropriate for him to have further opportunity to address the tribunal at the OPH on whether or not there should be a 'just and equitable' extension of time in his case, as well as the question of whether or not the claim is in fact in time for the reasons set out in his 15 December 2020 letter. (I think it may also be appropriate for another judge to deal with the OPH, if one is listed.) So, I am also minded to revoke my factual findings at paragraph 13 of my written reasons.

Next steps

7. Pursuant to r.72(1) of Sch. 1 to the ET Regs, **within 14 days of the date this document is sent to them** by the tribunal, the claimant and R1 are therefore to:
    a. respond in writing to my provisional views on the revocation of paragraph 6 of my 11 November 2020 judgment and paragraphs 11-13 of my written reasons, and the listing of the OPH as per paragraphs 5 & 6 above;
    b. indicate whether they consider that the decision as to the revocation of paragraph 6 of my 11 November 2020 judgment and paragraphs 11-13 of my written reasons and the listing of the OPH can be determined on the papers and without a hearing.

8. If I consider that my decision can be made without a hearing, the parties will be given a reasonable opportunity to make further written representations, in accordance with r.72(2) of Sch. 1 to the ET Regs.

Employment Judge Michell

2 JANUARY 2021