EMPLOYMENT TRIBUNALS

Claimant: Miss H Flint

Respondent RLS Care Services Limited

JUDGMENT
ON A RECONSIDERATION APPLICATION

The respondent made an application dated 15 February 2021 which was treated as an application for reconsideration of the Judgment sent to the parties on 12 February 2021. That application for reconsideration was refused.

The respondent has made a further application on 24 February 2021 on essentially the same grounds although now attaching a document in support of its application. That application was not copied into the claimant as required under rule 71. A copy of it has been sent to the claimant by the Tribunal. The further application for reconsideration has been considered however and is also refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The application was emailed by the respondent and received by the Tribunal on 24 February 2021. This further application is substantially the same application, it consists of a short email which repeats its case that the claimant was not employed by RLS Care Services Limited but now attaches a contract of employment which appears to name claimant's employer as MarshBuild Limited.

Rules of Procedure

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.

3. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

The application

4. The respondent in its email application repeats the assertion that the respondent was not the claimant's employer. The email application is sent from Daniel Jackson, Managing Director RLS Care Services Limited.

Background

5. The claimant submitted a claim form which provided that her dates of employment were from 6 December 2019 to 11 September 2020 and that her employer was RLS Care Services Limited. The respondent had submitted a blank ET3 but for the claimant's name and a copy of the notice of claim with the respondent's name crossed out and the words "not employed by RLS care employed by MarshBuild Limit tel 03333445044".

6. Employment Judge Blackwell wrote on 16 November 2020 asking the claimant to provide her comments on the respondent's assertion that it was not the correct respondent and asked her to provide a copy of her contract of employment or payslips to resolve this issue.

7. The respondent was copied into that correspondence.

8. The claimant by email of the 7 November 2020 sent a copy of a contact of employment dated 3 December 2019 which identified RLS Care Services Limited as her employer, the document was unsigned however the date provided for the start of employment in December 2019 which was consistent with her claim form.

9. A copy of the contract was sent to the respondent on 2 December 2020 and Employment Judge Ahmed directed that the respondent must complete a detailed defence to the claim by no later than 16 December 2020.

10. The respondent did not reply challenging the authenticity or otherwise the status of the contract of employment.

11. No detailed defence to the claim was presented.

12. On 7 January 2020 Employment Judge Adkinson made an Unless Order that the respondent must send to the Tribunal and the claimant a completed detailed defence to the claim within 7 days.

13. The respondent did not comply with that Unless Order.

14. Confirmation of dismissal of the response was issued confirming that the response had been dismissed on 15 January 2021 under Rule 38. The respondent was informed that it would only be permitted to participate in any hearing to the extent permitted by the Employment Judge.

15. The respondent was copied into the letter from the Tribunal listing the case for a hearing on 12 February 2021.

16. The claimant attended the hearing. The respondent did not attend.

17. The respondent did not file with the Tribunal any documents, witness statements or representations whether in connection with the assertion that it was not the employer or otherwise in respect of the claim for unpaid holiday pay.

18. The claimant gave evidence at the hearing under oath, supported by a copy of her contract of employment, that the respondent was the correct employing entity. The identity of the correct employer was considered by the Tribunal at the hearing and during its deliberations.

19. The respondent in its first application for reconsideration failed to supply any evidence to support its assertion that it was not the employer at the relevant time and therefore I determined that there was no reasonable prospect of the respondent establishing that the Tribunal made an error of law, or that any of the conclusions on the facts were perverse.

20. The respondent has applied again on 24 February 2021 now attaching what it states is a contract of employment between the claimant and Marshbuild Limited t/a Cooper Business. This document is not signed by the Marshbuild Limited but appears to bear an electronic signature for the claimant. It is not dated December 2019 but 29 May 2020.

21. The Marshbuild Limited document appears to set out an arrangement whereby the claimant was working on assignments or secondments to RLS Care Services however the application not only fails to explain what the arrangement was, there is no explanation why this document was not and could not have been made available at the original hearing. Indeed, the respondent was provided with the contract of employment the claimant relied upon in support of her claim by the tribunal and failed to comment on it, file a detailed defence or attend the hearing and the second application for reconsideration still fails to explain any of those omissions.

22. I have reminded myself of the underlying principles to be applied by tribunals in such circumstances as set out *Ladd v Marshall 1954 3 All ER 745, CA*. There, the Court of Appeal established that, to justify the reception of fresh evidence, it is necessary to show: that the evidence could not have been obtained with reasonable diligence for use at the original hearing, that the evidence is relevant and would probably have had an important influence on the hearing; and that the evidence is apparently credible.

23. A party seeking to adduce new evidence must also set out why reconsideration of the original decision is necessary. The first and second application for reconsideration fails to address that issue other than to restate that the respondent was not the employer.

24. The evidence produced by the respondent is apparently credible however it does not allege that the contract of employment produced by the claimant which names the respondent as her employer is not authentic and fails to explain its existence. It cannot be said that the contract now produced may not have a bearing on the result of the case however, I am mindful that it is not generally in the interests of justice that parties in litigation should be given a second 'bite of the cherry' simply because they have failed because of oversight or other unsatisfactory reason, failed to adduce all the evidence available in support of their cases at the original hearing. In this case the respondent had an earlier second 'bite at the cherry' with the first reconsideration application when it failed to produce the contract and it fails to explain in this second application why it failed to do so then let alone why it failed to do so at any time up to or at the hearing. It fails to explain why it made no attempt to disclose it until it received the Tribunal judgment and the claimant had been put to the time and inconvenience of attending the hearing.

25. A tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairy and justly under rule 2. The judgement awarded was for a nominal amount of £582.80 for unpaid holiday pay, which gives rise to issues of proportionality. There is also a public interest in finality of litigation and despite the apparent potential relevance of the new evidence, there is no explanation about the contractual arrangement as between the respondent, the claimant and Marshbuild Ltd and no explanation whatsoever for the failure to have produced this evidence at any time prior to or at the hearing. The respondent failed to engage with the tribunal process and comply with Orders of the Tribunal.

Conclusion

26. Having considered all the points made by the respondent I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The respondent has failed to explain why the evidence was not produced beforehand when the respondent has had so many opportunities to do so and why it is now in the interests of justice to consider that evidence. The application for reconsideration is refused.

Employment Judge Broughton

Date: 10 March 2021

JUDGMENT SENT TO THE PARTIES ON:

18 March 2021

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FOR THE TRIBUNAL OFFICE