



EMPLOYMENT TRIBUNALS

Claimant: Monika Bien

Respondent: Baltic Store NT Limited

Judgment was sent to the parties on 24 February 2021. The respondent has applied for reconsideration of the judgment.

JUDGMENT

The respondent's application is dismissed.

REASONS

1. The heading to this order is marked, "Code P". This means that the judgment was issued without a hearing.
2. The claim was sent by post to the respondent's registered office on 16 September 2020. It related, amongst other things, to an alleged dismissal in May 2020.
3. The respondent did not present an ET3 response to the claim. Under the provisions of rule 21 of the Employment Tribunal Rules of Procedure 2013, the respondent was entitled to be given notice of any hearing, but was not entitled to participate except to the extent permitted by the employment judge.
4. By letter sent to the respondent's registered office on 20 January 2021, the respondent was informed that there would be a hearing on 2 February 2020. This was clearly a typographical error. Any reasonable person reading the letter would know that the hearing was scheduled to take place on 2 February 2021.
5. The hearing proceeded on 2 February 2021. The respondent did not attend.
6. Judgment was announced at the hearing and sent to the parties on 24 February 2021. The covering letter indicated the name and e-mail address of the claimant's representative.
7. On 12 March 2021, the tribunal received a document headed "Application notice". There is no record of how it was delivered to the tribunal. The document used the civil court template Form N244 and was completed in

handwriting. It was signed and dated 8 March 2021. It asked for the judgment to be set aside on the ground that the author had not received the notice of hearing. It appeared from the entries on the form that the application had not been copied to the claimant. The author claimed not to have the claimant's address. The application did not indicate when the respondent had received the judgment or explain why the author had left it until 8 March 2021 to sign the application.

8. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so".
9. Rule 71 sets out the procedure for reconsideration applications. The application must be copied to the other party and must be presented within 14 days of the date when the written record of the decision was sent to the parties.
10. By rule 72(1), "An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked... the application shall be refused..."
11. The tribunal has the power under rule 5 to extend or shorten time limits prescribed by the rules.
12. Under rule 6 the tribunal can waive a party's non-compliance with certain rules including the provisions of rule 71.
13. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues.
14. In this case the last day for presentation of the reconsideration application was 10 March 2021. It was presented two days too late.
15. The application was not copied to the claimant or her representative, despite the judgment indicating the name and e-mail address to which correspondence to the claimant could be sent.
16. These are relatively technical defects. In a different case they could be cured by extending the time limit, or by waiving the requirement for the claimant to be copied in. But taking those steps would not help to achieve the overriding objective in this case. This is because there are two more serious difficulties with the application.
17. The first is that the respondent has not asked the tribunal to extend time for presenting a response. It has not sought to explain why no response was presented by the original deadline, or at any time since. Taking at face value the respondent's assertion that it did not know about the hearing date, it does not follow that the respondent did not know about the claim.
18. Second, and more fundamentally, the respondent has not provided a draft ET3 response, or any other indication of the grounds on which it would seek to resist the claim. There is nothing to suggest that, if the judgment were to be reconsidered, the eventual outcome could be any different.

19. My view, based on the material available to me, is that there is no reasonable prospect of the judgment being varied or revoked. I therefore dismiss the reconsideration application.
20. It is open to the respondent to renew its application. Before making such an application, the respondent should consider carefully the reasons I have given for dismissing this application, and, in particular, the importance I attached to the lack of a draft ET3 response and any explanation for it not having been presented up to now. The respondent should also be aware of the importance of acting promptly.

Employment Judge Horne

18 March 2021

SENT TO THE PARTIES ON
25 March 2021

FOR THE TRIBUNAL OFFICE