



EMPLOYMENT TRIBUNALS

IN THE EMPLOYMENT TRIBUNAL SITTING AT BIRMINGHAM

Before: Employment Judge Findlay
On: 7 April 2021

Claimant: Mr D Wright
Respondent: DM Operating Bars Limited

Representation:

Claimant: In person
Respondent: No attendance

JUDGMENT

The respondent's application dated 4 January 2021 for reconsideration of the judgment sent to the parties on 26 November 2020 is refused.

REASONS

1. My previous case management Order dated 17 March 2021 sets out the background to this application. It was made out of time but I directed that there should be a hearing by Cloud Video Platform on 17 March 2021 to consider the application.
2. My previous Order sets out what occurred on that occasion. Although I, the clerk and the claimant were all able to connect without difficulty, and at one stage I could see the room in which the respondent's representative Mr Moss was sitting, the respondent's representative said that he could not access the hearing and so it was converted to a telephone hearing. As explained in my previous order, although Mr Moss was apparently connected and the usual automated response indicated that was the case, he was then absent from the call and the clerk was unable to contact him again, despite numerous attempts.
3. I therefore relisted this hearing as an "in person" Hearing at Birmingham Employment Tribunal and gave directions. The Case Management Order and Notice of Hearing were sent out on the same day by email at 16.42 to both parties. Earlier that afternoon, at 15.45, an email had been sent from the respondent's email address requesting an update on the outcome of the hearing.
4. Since then, there has been no contact with the Tribunal by the respondent, which has failed to comply with the directions in the case management order by providing

Case No: 1306208.2020

a copy of correspondence allegedly sent to the Tribunal on 16 November 2020 or providing a written explanation as to why it failed to attend the original hearing (of which it accepts it had knowledge) on 17 November 2020. The tribunal has no record of any correspondence from the respondent on 16 November 2020 and there has never been an explanation of why it could not attend the Hearing the following day.

5. There was no attendance or representation of the respondent at the hearing today, although I waited for 10 minutes after the start time at 10.30 in case they had been delayed. No message explaining their absence was received.
6. I have considered the draft ET3 response received on 21 January 2021, no response having been received by the due date of 11 August 2020. The claimant has provided documentary evidence to contradict some of the contents of the draft ET3 (for example, showing that he was paid into his bank account, not in cash, and verification from HMRC of the amounts paid in January to March 2020). Even if he was not an employee, which seems unlikely, the claimant is entitled to claim unauthorized deduction of wages of the amounts awarded as he was undoubtedly a “worker” within the meaning of the Employment Rights Act.
7. According to the HMRC documentation I have seen, HMRC were notified that the by the respondent that the claimant’s employment ended on 1 August 2020, although I accepted (to the respondent’s advantage) the claimant’s evidence that he knew on 7 May 2020 that his employment had ended. I have also taken into account the application notice and letters sent by the respondent in relation to this case since January 2021.
8. In the circumstances, taking into account the overriding objective in rule 2 of the Employment Tribunal Rules together with interests of the respondent, the claimant (and the public interest in finality of judgments) I do not consider it to be in the interests of justice to set aside or vary the judgment sent out on 26 November 2020; that judgment is confirmed and this application to set aside is dismissed.

Employment Judge **Findlay**
7 April 2021