



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss K Wright

v

Minster Law Limited

Heard at: Leeds (by telephone) On: 5 March 2021

Before: Regional Employment Judge Robertson (sitting alone)

Representation:

Claimant: In person

Respondent: Miss T Hand, counsel

RESERVED JUDGMENT ON RECONSIDERATION

1. On reconsideration under rules 70-72 of the Employment Tribunals Rules of Procedure 2013, the Tribunal's judgment in this case sent to the parties on 27 November 2020 is revoked.
2. The claimant's application under rule 38(2) of the Employment Tribunals Rules of Procedure 2013 for the Unless Order in this case dated 2 April 2020 to be set aside and the respondent's application for a Costs Order in respect of the postponement of a hearing on 13 October 2020 will be taken again and will be re-listed for hearing.

REASONS

1. The claimant, Miss Wright, applies under rule 71 of the Employment Tribunals Rules of Procedure 2013 for reconsideration of the Tribunal's judgment in this case sent to the parties on 27 November 2020. By that judgment, made at a hearing before me on 20 November 2020 which the claimant did not attend, (1) I refused the claimant's application under rule 38(2) of the Employment Tribunals Rules of Procedure 2013 for an Unless Order made by me in the case and dated 2 April 2020 to be set aside, and (2) I ordered her to pay costs to the respondent, Minster Law

Limited of £900 in respect of the postponement of an earlier hearing listed on 13 October 2020.

2. Rule 70 of the Employment Tribunals Rules of Procedure 2013 provides that a Tribunal may on its own initiative or on the application of any party reconsider any judgment where it is necessary in the interests of justice. On reconsideration, the judgment may be confirmed, varied or revoked, and if revoked, may be taken again.

3. A party may apply for reconsideration under rule 71. The claimant says in her application dated 11 December 2020 that it is in the interests of justice to reconsider the judgment because she did not receive notice of the hearing on 20 November 2020.

4. The material background is as follows. The claimant pursues complaints in this case of unfair dismissal, unlawful disability discrimination and unpaid wages. The proceedings have had a lengthy history during which the claimant has repeatedly not complied with case management orders and on at least one previous occasion has not attended a hearing.

5. On 2 April 2020 I made an Order (the Unless Order) under rule 38 of the Employment Tribunals Rules of Procedure 2013 in terms that unless, within 14 days of the date on which the Order was sent to the parties, the claimant complied with paragraphs 2.1, 3.1 and 3.2 of the Case Management Orders made by the Tribunal on 18 February 2020, copying her compliance to the Tribunal, her complaints should stand dismissed under rule 38(1) without further order.

6. The respondent contended that the claimant had not complied with the Unless Order. The claimant disputed this. At a hearing on 8 June 2020 Employment Judge Rostant determined that the claimant had not complied with the Unless Order and accordingly her complaints had stood dismissed on 17 April 2020.

7. The claimant wrote to the Tribunal on 23 June 2020. Although she described her letter as an application for reconsideration of the Judgment of 8 June 2020, I treated it as properly an application under rule 38(2) for the Unless Order to be set aside (colloquially, an application for relief from sanction). The Tribunal listed it for hearing on 13 October 2020.

8. The claimant applied on 24 September 2020 for postponement of the hearing. She relied on unspecified "prior commitments". On 2 October 2020 Employment Judge Davies required her to provide particulars of the other commitments by return. On 8 October 2020, nothing further having been heard from her, Employment Judge Lancaster refused to postpone the hearing. On 12 October 2020 the claimant renewed the postponement application, now relying on a gas safety check and returning from holiday in Spain and being required to self-isolate. Based on that last factor, I postponed the hearing due to take place the following day and the Tribunal re-listed

the hearing for 20 November 2020. The Tribunal sent Notice of Hearing for that date to the parties on 2 November 2020.

9. The claimant did not attend the hearing on 20 November 2020. I made the Judgment referred to at paragraph 1 above. The Tribunal sent the Judgment to the parties on 27 November 2020.

10. The claimant says that she did not receive notice of the hearing on 20 November 2020. She applies for reconsideration of the Judgment. She says in her application dated 11 December 2020 that:

“I did not have access to my emails between the dates of 21 October and 29 November. Unfortunately, and despite my repeated requests for all correspondence to also be posted to me whilst my technical issues remain ongoing, this has not been the case so I was unaware to attend the hearing listed for 20 November 2020.”

11. On initial consideration, I decided that the application should not be refused under rule 72(1), and listed the application for hearing. I heard the application on 5 March 2020, by telephone conference call after efforts to conduct the hearing using the Tribunal’s Cloud Video Platform failed through technical difficulties. The claimant appeared in person and the respondent was represented by Miss Hand, counsel.

12. The claimant told me that she accesses her emails on an elderly mobile phone which repeatedly uninstalls the necessary email app. As a result, she is frequently unable to receive emails. She has had these difficulties throughout these proceedings but cannot afford to replace the phone. She had asked the Tribunal to correspond with her by post. She says she did not receive the Notice of Hearing for 20 November 2020 when it was sent, and was unaware of the hearing or its outcome until 29 November 2020 when she accessed her emails at her sister’s home. She lodged the reconsideration application on 11 December 2020.

13. Having checked the file, I informed the parties that the claimant had contacted the Tribunal on 25 August and 24 September 2020 referring to her email problems and asking for correspondence to be posted to her. As the claimant said she had not received them, I adjourned the hearing to investigate how the Tribunal had sent to her the Notice of Hearing dated 2 November 2020 and a later letter dated 18 November 2020 which referred to the hearing on 20 November 2020. I was unable to check this on the day because of a change in IT systems taking place that day.

14. I established that the Tribunal file showed both communications to have been emailed to the claimant. That, in itself, did not mean that they were not also sent by post, but the Tribunal file was silent as to that. Although there was a note on the file that the case record had been updated that correspondence should be sent to the claimant by post following her letter of 24 September 2020, the electronic case record still showed the communication method as email, with no mention of post. I

established that Tribunal staff would normally refer to the electronic record when creating communications to the parties.

15. On 12 March 2021 I wrote to the parties with my provisional view:

Although I am unimpressed with the claimant's failure to resolve her long-running email issues, particularly when she continued to communicate with the Tribunal by email throughout the period, I recognise that she wrote twice to the Tribunal in August and September 2020 asking that correspondence be sent to her by post. For the reasons I have given, I cannot be satisfied that this was done, indeed the evidence I have mentioned suggests it was not, and my provisional view is that there is a very real possibility that the claimant did not see the Notice of Hearing and was unaware of the hearing on 20 November 2020.

This is a provisional view only. I invite the parties' representations, within 10 days of the date on which this document is sent to them, as to what action I should take. Unless the parties apply for an oral hearing, I will then make a decision, without a further hearing, on the claimant's application for reconsideration. If I grant the application, I will re-list the rule 38(2) application for hearing. I emphasise that I have not reached any decision on the merits of the rule 38(2) application.

16. Neither party requested an oral hearing. On 18 March 2021 Miss Hand provided written submissions which I have considered. I am grateful to her. I have not heard from the claimant.

17. Miss Hand says firstly that the claimant should have been more proactive in following up the re-listing of her application after 13 October 2020. She reminds me that the claimant told me during the hearing on 5 March 2021 that she expected to receive a Notice of Hearing within four weeks. She says secondly that the claimant, expecting a new Notice of Hearing, should have made more effort to access her emails. Finally, she says that the claimant has not established she has any email issues, and appears able to communicate via email when it suits her.

18. I see the force in all of this, but the difficulty is that the claimant wrote twice to the Tribunal in August and September 2020 asking that correspondence be sent to her by post. For the reasons I have given, I cannot be satisfied that this was done, indeed the evidence I have mentioned suggests it was not, and I conclude that there is a very real possibility that the claimant did not see the Notice of Hearing and was unaware of the hearing on 20 November 2020. It seems to me reasonable for the claimant to expect that the Tribunal would communicate with her in the way she had requested, and not to be actively checking her emails in such circumstances.

19 In these circumstances, I am not satisfied, on the balance of probabilities, that the claimant received the Notice of Hearing for 20 November 2020. As it was made in her absence, I have concluded that it is in the interests of justice that the Judgment be revoked, and the claimant's rule 38(2) application, and the respondent's costs application in respect of the hearing on 13 October 2020, be taken again. They will now be re-listed for a hearing which will take place in person. I direct further that this

Judgment and Reasons, and continuing correspondence including the Notice of Hearing for the re-listed hearing, will be sent to the claimant by email and post.

20. I emphasise that this decision does not say anything about the likely outcome of either application when taken again.

Regional Employment Judge Robertson

6 April 2021