



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Mr R Mottershead (1)
Miss R Perkins (2)

AND

Respondent

Mr Paul Matthews
t/a Crab Shack on the Beach

HELD REMOTELY AT Plymouth **ON** 09 April 2021
By Cloud Video Platform

EMPLOYMENT JUDGE N J Roper

Representation:

Both Claimants: In person

Respondent: Present, with Mr Hine, Solicitor

JUDGMENT ON APPLICATION TO RECONSIDER RULE 21 JUDGMENTS

The judgment of the tribunal is that the respondent's application for reconsideration is allowed and the Judgments dated 31 July 2020 are hereby revoked.

REASONS

1. The respondent has sought a reconsideration of the judgments entered under Rule 21 dated 31 July 2020 which were sent to the parties on 12 August 2020 ("the Judgments").
2. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by Video Hearing Service. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 67 pages, the contents of which I have recorded. The order made is described at the end of these reasons.
3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2015 ("the Rules"). Under Rule 21(2) judgment can be issued where no response has been presented within the time limit in Rule 16, or a response has been rejected and no application for reconsideration is

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- outstanding, or the respondent has stated that no part of the claim is contested.
4. Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.
 5. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
 6. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
 7. The detailed history of this matter is as follows. The first claimant is Mr Richard Mottershead and he presented his proceedings to this Tribunal on 16 April 2020. The respondent was named as Mr Paul Matthews trading as Crab Shack on the Beach at an address of 3 Queen Street Teignmouth Devon. The claimant explained that he had worked as a chef between 19 December 2018 and 13 December 2019, and he claimed accrued but unpaid holiday pay in the sum of £2,347.00. The proceedings relied upon an ACAS Early Conciliation Certificate and the prospective respondent was named as Crab Shack on the Beach at 3 Queen St.
 8. The second claimant is Miss Rebecca Perkins. She also presented her proceedings to this Tribunal on 16 April 2020. Similarly, she named as the respondent Mr Paul Matthews trading as Crab Shack on the Beach using the address 3 Queen Street, Teignmouth. She explained that she had worked as a Counter Assistant from 2 April 2019 until 19 December 2019. Again, her claim was limited to one of accrued but unpaid holiday pay, this time in the sum of £1,329.00
 9. Mr Matthews the named respondent did not enter a response to either claim. However, he did email the Tribunal on 29 June 2020 to suggest that he had only just received the claims and that he wished to dispute them, although he noted there had been an earlier deadline to do so of 4 June 2020. By letter dated 16 July 2020 Mr Matthews was then directed to complete a proposed form ET3 response and to submit an application to have the response accepted out of time, together with an explanation as to the delay.
 10. Mr Matthews then tried to do so by emails dated 30 July 2020 and 31 July 2020, but he failed to add the Tribunal reference numbers, and they were not correctly filed. In the absence of any apparent response and in the absence of any further application, I entered judgment under Rule 21 in respect of each of the claims (the Judgments) as explained above.
 11. By email dated 27 August 2020 Mr Matthews sent a further email to complain and to seek to be allowed to defend the claims.
 12. Mr Matthews then instructed his current representatives who made an application on 14 October 2024 for the Judgments to be revoked and for a proposed response to the claims to be accepted out of time. That application made the following points. In the first place the proceedings were served at 3 Queen Street in Teignmouth, and although that is a property owned by Mr Matthews, it is a holiday let which was vacant

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- because of the Covid-19 pandemic, and the letting agents responsible had not checked or forwarded any email to the respondent.
13. Secondly, Mr Matthews suggested that he has never personally employed either of the two claimants. He suggested that they were employed by either of two limited companies, firstly Chip Shack Ltd, and then Crab Shack Restaurants Limited. Mr Matthews is a director of these companies.
 14. Following discussion between the parties, it was then agreed by both claimants and the respondent that they were initially employed by Chip Shack Ltd but that their employment transferred to Crab Shack Restaurants Limited on 28 June 2019. Both claimants agreed that the claims should more properly be presented against Crab Shack Restaurants Limited in respect of accrued but unpaid holiday pay between 28 June 2019 and 19 December 2019.
 15. All parties then consented to the Judgments being revoked, and alternative judgments being entered under Rule 21 for Mr Mottershead in the sum of £1,296.00 (12 days accrued holiday pay at £108.00 per day) and for Miss Perkins in the sum of £770 (11 days at £70.00).
 16. Accordingly, the Judgments are hereby revoked in the interests of justice, and I have prepared separate judgments of today's date as indicated above.

Employment Judge N J Roper

Date: 09 April 2021

Judgment sent to the Parties: 26 April 2021

FOR THE TRIBUNAL OFFICE