



EMPLOYMENT TRIBUNALS

Claimant

Mr M Michalowski

v

Respondent

Brackmills MOT Centre Limited

Heard at: Cambridge (by CVP)

On: 15 April 2021

Before: Employment Judge KJ Palmer

Appearances

For the Claimant: Miss Wisniewska (Lay Representative).

For the Respondent: Mr J Munro (Solicitor).

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

JUDGMENT PURSUANT TO AN APPLICATION FOR A RECONSIDERATION

1. It is the Judgment of this Tribunal that the Judgment dated 9 September 2020 which was a Judgment under rule 21 of the Employment Tribunal Rules of Procedure be set aside and that the respondent be permitted to continue to defend the claim. The ET3 filed by the respondent together with this application do stand as the respondent's ET3 in this case.
2. The matter be listed for a 2 hour preliminary hearing by telephone to consider the issues set out below.

REASONS

1. This matter came before me today as an application under rule 71 of the Employment Tribunal Rules of Procedure for a reconsideration of a Default Judgment signed by me pursuant to paperwork that I did dated 9 September 2020. I sent out a Default Judgment under rule 21 on the basis that the respondent had failed to file an ET3 within the requisite 28 day time limit and that Judgment was given and then subsequently pursuant to that a remedy hearing was fixed. Prior to the remedy hearing taking place this application was received by the Tribunal from those representing the respondent.
2. The claimant presented a claim on 12 May 2020, that claim was sent to the respondent by the Tribunal on 4 June 2020 giving 28 days for an ET3 to be filed, that is by 2 July 2020. When the file came to my attention it was September and still nothing had been received and so I issued the standard default Judgment as a result.
3. The application before me was supported by Mr Munro who is a solicitor representing the respondent and I also had a Mr Mo Hussein in front of me who is the Managing Director of the respondent company and I also had a witness statement from Mr Hussein that was provided at the beginning of this hearing.
4. Essentially the respondent asked that I set aside that Default Judgment under rule 71 and the basis for that request is that they say they never saw the ET1 or the proceedings until in November of 2020. In fact Mr Hussein in his witness statement explains that he received the Default Judgment first towards the end of October and then subsequently he received the ET1 and then shortly after that the Notice of Remedy Hearing. So as Mr Munro points out the sequence of events of receipt of the documentation was rather out of kilter. He then with reasonable speed instructed Peninsula who have represented him thereafter and caused this application to be lodged at the Tribunal on 3 December and I find no fault with the actions of Mr Hussein in terms of instructing lawyers as quickly as possible. That application was then accompanied by a detailed ET3 which I also have before me.
5. During the course of the hearing it was possible to ascertain that the address to which the ET1 and then subsequently all other documentation including the Default Judgment were sent was not the correct address of the respondent albeit that it was very close. The correct address of the respondent is 10a Osyth Close, Northampton where as it appears that all the documents were sent to number 10 Osyth Close, Northampton and that would have been because that was the address given by the claimant in his ET1. Mr Hussein explained to me when I asked him directly out with his witness statement that in fact number 10 was a unit some way up the road from the respondent, an engineering company that was probably 50 yards away. I also questioned him as to when he received the various

documentation, was there any evidence attached to it that it had been delivered to the wrong address and perhaps sent back to the Post Office or even back to the Tribunal and re-served. He said there was no evidence or at least he could not recall seeing any.

6. I also heard from Miss Wisniewska who is a lay representative representing the claimant and she very correctly pointed out to me that time limits in Tribunals are very strictly applied and that time limits for claimants to present claims to the Tribunal are strictly governed by the legislation and the same applies in respect of the Employment Tribunal Rules of Procedure with respect to respondents replying.
7. The claimant's claim on the face of the ET1 is not clear and in fact the respondent's ET3 that they filed in support of this application is predicated on the basis that they assume that the claimant is proceeding with a claim for unfair dismissal and their argument is therefore that as he was only employed for just over a year the Tribunal has no jurisdiction to hear such a claim. In fact when I questioned Miss Wisniewska it appears that the claimant's claim may be something different and she said that it is a claim for unfair dismissal arising out of the legislation relating to disclosure of a Health & Safety issue which then led to the claimant's dismissal. That is not clear from the ET1, the ET1 which is homemade and which was filled in by the claimant who is a Polish national simply suggests that he did not have a contract of employment, had not been given a P60 and no PAYE number. It just says he was fired because he wrote on the web "Coronavirus kill people". Miss Wisniewska says that that was essentially him advertising to the world that he felt that the respondent was not following Coronavirus Regulations and that as a result of that he was dismissed. That is not clear from the ET1 and for reasons that will become clear it would be necessary for that to be cleared up in due course.
8. Having listened to both submissions I find myself constrained really by the evidence that I have got in front of me. I have no reason to dis-believe Mr Hussein and I fully accept that for whatever reason he did not see the ET1 until 11 November and was not really alerted to these proceedings at all until he received the Default Judgment that I had signed in September. So therefore this is a classic case where I am duty bound under the regulations to set aside the Default Judgment that I gave and I do so set it aside. I also accept the ET3 that was filed with this application as the ET3 that should stand on behalf of the respondent in this matter.
9. Then it falls to me to determine how best to proceed. It seems to me that having heard the explanation from Miss Wisniewska the claimant is going to have to apply to amend his proceedings to include his claim for a Health & Safety related dismissal and it may be that that application to amend is resisted but he will have to make such an application and then that application will be heard on 1 September 2021 in a telephone preliminary hearing to be conducted before a Judge and thereafter the Judge will

make such case management decisions as are appropriate in the circumstances pursuant to that application for an amendment.

10. It appears that the only other live claim in the claimant's ET1 is a claim under s.38 of the Employment Act 2002 that he received no written particulars under s.1 of the Employment Rights Act 1996 and of course that can be pursued as a stand alone claim but has more teeth when it is allied to a claim that falls under Schedule 5 as set out in the Employment Act 2002.
11. So Miss Wisniewska should make an application to amend. That application will be heard on the date that I have indicated.

Employment Judge KJ Palmer

Date: ...30 April 2021.....

Sent to the parties on: ..10 May 2021...

.....GDJ.....
For the Tribunal Office