



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4112089/2019 Reconsideration Per Written Submissions

Employment Judge: M A Macleod

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Miss Chloe Moffat

Claimant

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Hannah McMahon

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the respondent's application for reconsideration is refused.

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REASONS

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1. The Employment Tribunal issued a Judgment dated 24 January 2020 following a Hearing on that date, in which it was determined that the respondent's ET3 should not be allowed to be received late, for want of any proper basis for the application, and that the claimant's claim should succeed, with the respondent ordered to pay to the claimant £798.66.
2. The terms of that Judgment are referred to, and the reasons set out therein.
3. The respondent submitted an application for reconsideration of that Judgment by letter dated 9 February 2020 sent to the Tribunal.

4. Following delays which arose from the interruption to normal business brought about by the coronavirus pandemic, the Tribunal wrote to the parties to confirm that a hearing would be convened in order to determine the respondent's application for reconsideration, on 28 July 2020, proposing that that hearing should be convened to take place by video conference.
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5. That hearing was then listed to take place before a different Employment Judge, and as a result, it was postponed, on the basis that it was necessary for the application to be dealt with by the Employment Judge who issued the original Judgment. It was then proposed that the matter should be dealt with by written submissions, but the respondent preferred to convene a hearing. The claimant then made clear that she could not attend a video hearing, and so further delays occurred.
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6. Thereafter, owing to the claimant's failure on a number of occasions to respond to correspondence from the Tribunal it was determined on 30 March 2021 that the application for reconsideration would be dealt with on the respondent's written submissions alone.
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Respondent's Submissions

7. The respondent presented a "Case Summary" in which they set out their version of events.
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8. They advised that the Judgment of 24 January 2020 was never received by them, and that they only discovered that an award had been made against them when they contacted the Glasgow Employment Tribunal on 7 February 2020.
9. The reasons for the application for reconsideration were then set out. They were first contacted by ACAS in October 2019. They said that they had submitted an ET3 and covering letter to the Tribunal on 21 November 2019, a copy of which was provided by them at E12.
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10. The respondent received a letter from the Glasgow Employment Tribunal on 10 December 2019, seeking return of the ET3 form if the respondent intended to defend the claim, at which point the respondent contacted the
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Tribunal by telephone on that date, and then by email on 11 December 2019 (E1).

- 5 11. On 12 December 2019, the respondent emailed the Glasgow Tribunal with a copy of the ET3, and received an automated email acknowledgement of that email from the Tribunal (E3/4).
- 10 12. The respondent again contacted the Tribunal by telephone on 14 January 2020, followed by email on 15 January 2020 (E5). On 16 January 2020, the respondent received email correspondence from the Tribunal acknowledging receipt of the ET3 and granting an extension of time for the presentation of the ET3 due to extenuating circumstances (E7). That day, the respondent complied with a direction of the Tribunal providing a copy attachment and a copy of the Tribunal reply (E8).
- 15 13. The respondent therefore submitted that given the terms of the detailed correspondence and the Tribunal's acceptance of the ET3 defence to the claim, allied to the Tribunal Judge's granting of an extension of time, the Tribunal was wrong to grant the award in the absence of a defence.
- 20 14. The respondent went on to set out further information and assertions on the respondent's behalf. They submitted that the respondent has never employed the claimant, but that the company Hannchelle Limited t/a Hansbury Stud operated from the premises known as Hansbury Stud, Cousland, Dalkeith EH22 2PJ. They said that the claimant was employed by the company following an interview, on a trial basis, but that shortly after appointment the claimant commenced a series of absences from employment due to a condition never mentioned at interview. As a result, the respondent found the claimant's absences untenable, and accordingly
- 25 the company advised her that her trial period was brought to an end as she was not suited to the duties she was employed to carry out.
- 30 15. The respondent accepts that an "un-agreed amount of recompense" is due to the claimant for the period during which she was on trial, but that their efforts to resolve the claim via ACAS have been unsuccessful.

16. The claimant was not employed by the respondent as an individual, but by the company Hannchelle Limited t/a Hansbury Stud.

17. The respondent seeks reconsideration of the Judgment, recall of the award and costs of the application to include all fees and further damages which the Tribunal sees fit to award, “where the Tribunal has previously indicated that damages may be sought by the Respondent against the Claimant for the actions of the Claimant following the award of 24 January 2020”.

Discussion and Decision

18. The Judgment issued by the Tribunal on 24 January 2020 is challenged by the respondent, essentially on the grounds that they had attempted to submit an ET3 on a number of occasions, and that on one of those occasions the Tribunal confirmed to them that an extension of time had been granted to them to permit the ET3 to be considered.

19. It is important to ensure that the sequence of events is accurately reflected by the original Judgment, as well as in this Judgment.

20. Paragraphs 5 to 12 sets out the sequence of events which led the Tribunal at that time to decide that the claim should succeed and that the application to extend time should not be granted.

21. In my judgment, those paragraphs speak for themselves, and represent an accurate record of what had taken place in this case, notwithstanding what the respondent now seeks to say.

22. However, of more interest is the assertion by the respondent in its summary of events, which I quote for accuracy, at paragraph 13:

“On 16 January 2020 the Respondent received email correspondence from the Tribunal acknowledging receipt of the ET3 and granting an ‘extension of time’ for the lodging of the ET3 due to the extenuating circumstances (E7)”

23. This is a bold assertion, and plainly relevant if correct.

24.E7 is a copy of an email which appears on the Tribunal file, dated 16 January 2020. It is worth repeating here:

“We refer to your email dated 15 January 2020 and write to acknowledge safe receipt.

5 *Employment Judge C McManus, to whom your correspondence was referred, has directed that we write to you and confirm that your email dated 15 January 2020 will be treated as an application for an extension of time to lodge the ET3 form. The Employment Judge has directed that you provide evidence of the previous attempts to lodge the ET3. Please reply*
10 *by 23 January 2020.”*

25.The respondent represents this email as one in which the Tribunal has granted an extension of time due to extenuating circumstances.

26.That is an inaccurate representation of that email, as any reading of it makes plain. The Tribunal confirmed that the email of 15 January 2020 was
15 being treated as “an application for an extension of time to lodge the ET3 form”, but then directed that the respondent must provide evidence of the previous attempts to lodge it.

27.It is a matter of considerable concern to the Tribunal that the respondent has made an application based upon an assertion that is – to put it mildly –
20 demonstrably incorrect. No extension of time was granted, and no possible reading of the email can justify that assertion. In addition, further evidence was sought by the Tribunal. Had such an extension of time been granted, there would have been no reason to seek further evidence.

28.The other emails which have been presented to the Tribunal with this
25 application were already available to the Tribunal at the point when the Judgment was issued. No new information has been presented.

29.Accordingly, the application for reconsideration is refused. It is based, for the largest part, on a repeated assertion that the Tribunal had already granted an extension of time when it plainly had not. Such an attempt to
30 misrepresent the position to the Tribunal, particularly when based upon an

email issued by the Tribunal itself, is perilously close to unreasonable conduct on the part of the respondent.

30. What remains, however, is a clear difficulty for the claimant. Essentially, the respondent is saying that the named individual who is said to be the
5 respondent (Hannah McMahon) is not personally the claimant's former employer, but that she was employed by a company. This is a matter for the claimant, but the enforceability of an award against an individual as opposed to the employing company is problematic.

31. The difficulty is that the ET3 is directed against Hannah McMahon, but that
10 the name of the company on the ET3 is also given, as part of the address. The respondent should properly be designed as Hannchelle Limited t/a Hansbury Stud, rather than Hannah McMahon or Hansbury Racing Limited.

32. The Judgment remains in place, but it is plain that the respondent, as
15 named, does not accept that it is validly against her, and accordingly it is appropriate to suggest to the claimant that if the respondent is unwilling to meet the terms of the Judgment, she should seek independent advice as to how she should proceed.

33. There is no basis upon which the respondent's application – if it amounts to
20 that – for expenses against the claimant, nor of damages for uncertain reasons, could be granted, and accordingly that application is refused.

25 Employment Judge: Murdo Macleod
Date of Judgment: 05 May 2021
Entered in register: 13 May 2021
and copied to parties