



EMPLOYMENT TRIBUNALS

Claimant: Mr A Parfitt

Respondent: Focused Recruitment (Temp) Limited

Heard at: Cardiff

On: 27 May 2021

Before: Employment Judge R Evans (in Chambers)

JUDGMENT

1. The Respondent's application for a reconsideration of the judgment of 14 May 2021 is refused.

REASONS

1. These are my reasons arising from what I have interpreted to be an application for a reconsideration.
2. By Form ET1 received on 7 July 2020 the Claimant, who hails from Mountain Ash, had made a claim against the Respondent for unpaid wages.
3. The Respondent is based in Ystrad Mynach and is a temp agency. It had defended the claim by Form ET3 received late on 20 August 2020 which contended that the Claimant had been advised that his temporary contract had ended on 27 March 2020.
4. The case was timetabled to a Final Hearing before me on 14 May 2021 to be effective in person. It is to be noted that the proceedings occurred during the COVID-19 global pandemic. The Claimant had sought an in-person Hearing and the Respondent did not oppose the same. Ultimately, the Respondent did not attend the Final Hearing. I proceeded in its absence. I read the bundle filed by the Claimant, read his statement and

heard sworn evidence, after which I delivered oral Reasons and entered Judgment for the Claimant in the sum of £2,003.57. By email on 17 May 2021 (which I have seen) the parties were notified of and served with, my Judgment.

5. On 24 May, the Tribunal received an email from Helena Shaddick of the Respondent in reply to the email of 17 May 2021 (she had, I note, been managing the claim on its part and was the point-of-contact). The email set out,

'Hi

Firstly apologise for delay and non-response. Due to circumstances beyond control I was unable to attend in person.

Having sort advise can I please request a new / reconsideration hearing via live link or face to face to dispute the claim .

Also please note change in email address from ... [previous email address]

Helena Shaddick'

THE RELEVANT LAW

The Employment Tribunal Rules 2013

6. *Employment Tribunal Rules (ETR) 2013 (as amended) rule 47 provides,*

'Non-attendance

47. If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.'

7. In so far as an application for reconsideration is concerned, *ETR 2013 rules 70 to 72* provide,

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) *An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application.*

(2) *If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

(3) *Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.’*

8. An application for reconsideration is an exception to the general principle that (subject to an appeal on a point of law) a decision of an Employment Tribunal is final.
9. The importance of finality was confirmed by the Court of Appeal in *Ministry of Justice v. Burton and anor* [2016] EWCA Civ 714 where it was said:

‘the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review.’

10. Further, in *Liddington v. 2Gether NHS Foundation Trust* EAT/0002/16 the Employment Appeal Tribunal set out that,

“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or reargue matters in a different

way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”

MY DECISION TO PROCEED IN ABSENCE

11. As I have indicated, no one attended on behalf of the Respondent. During the Hearing I noted the chronology in so far as it was relevant to that issue to be as follows:

- a. The Form ET3 was filed late. Permission had been sought for that to be filed late and ultimately EJ Brace accepted that on 24 August 2020.
- b. On 24 September 2020, the Tribunal sent to the parties the directions for a Final Hearing which included the provision of exchanging documents and witness evidence. The following day the Claimant sought an in-person Hearing.
- c. Allowing the Claimant’s application, on 13 December 2020 the Tribunal gave directions for an in-person Hearing on 14 May 2021. Those directions provided for any evidence and documentation to be filed five working days prior to the Hearing.
- d. On 21 April 2021 the parties were written to and (i) asked to confirm who would be attending the Hearing; and (ii) reminded of the directions previously sent.
- e. On 9 May 2021, the Claimant filed his documents. Nothing was received from the Respondent.
- f. I caused the Tribunal Clerk to make enquiries of the Respondent after 11:00am on the day of the Final Hearing, the Hearing due to be effective for three hours from that time. I was told that the Respondent had been spoken to and indicated that the person dealing with the matter, Ms Shaddick, was not in the office. They did not know if she was en route to Cardiff.
- g. For completeness, at no time did anyone attend or request a postponement on behalf of the Respondent. No evidence was filed on its behalf.

POST-JUDGMENT

12. Following my Judgment, there was no request for written Reasons, and I note the guidance on the face of the Judgment in respect of the same. That time limit is not suspended by virtue of the Respondent’s email. In addition, there was non-compliance with *ETR 2013 rule 71* and as such, the Claimant has had no notice of the request. However, for reasons I will come on to, that need not delay the process.

13. I note, by virtue of the reply on 24 May 2021, that the Respondent was receiving Tribunal correspondence and able to reply in a relatively prompt manner. There was no suggestion that correspondence had not been received.
14. Looking back at Ms Shaddick's email of 24 May 2021, there is no reason or rather, explanation, even now, for the non-attendance. There is reference to, '*... circumstances beyond control*' but I have simply no idea what that means, and I remind myself of the enquiries made of the Respondent on the day. In addition, it is probative in my judgment that no effort was made by the Respondent (whether Ms Shaddick or otherwise) before, during or after the Final Hearing to alert the Tribunal to any issues, seek an adjournment or explain the position. The Judgment was the only trigger it would seem. Further, there was no explanation provided for other non-compliance (such as the failure to file and serve witness evidence).
15. I also struggle to see how it is that no steps were taken promptly especially having regard to the fact that my clerk telephoned the Respondent on the day and raised the fact that a Final Hearing was due to take place. It would seem unlikely that this was not raised with key persons within the business at the time.
16. Further, I have to remind myself that the Respondent did not file any evidence contrary to previous directions. As such, it is not only a reconsideration sought but also permission, effectively, for relief and permission to file and serve new evidence. That would cause further delay. I should also note this claim to be around a year old now.

MY DECISION

17. It remains the case that I was right to exercise my discretion and proceed in the absence of the Respondent. Parties and indeed the Tribunal are entitled to expect compliance with directions and rules. There was, in my judgment, a chronology of events leading up to that Final Hearing that, looking back, was consistent with non-attendance. There was no evidence. There was limited engagement.
18. I have considered that the Respondent's request lacks any detail or supporting evidence. Against the canvas of,
 - a. the limited engagement;
 - b. a failure to comply with directions in respect of evidence prior to the Final Hearing;
 - c. the failure to seek an adjournment and/or enquire on the day or after the Final Hearing as to the circumstances (despite the Tribunal's own efforts on the day); and
 - d. my having carefully considered all of the documentation (including contemporaneous documents) in reaching my decision that the Claimant was entitled to the award that he received,

Claim No: 1601526/2020

I am driven to the irresistible conclusion that there is no reasonable prospect of my original decision being varied or revoked.

19. the application for a reconsideration of my Judgment of 14 May 2021 should be refused.

.....

Signed by Employment Judge R Evans

27 May 2021

JUDGMENT SENT TO THE PARTIES ON 2 June 2021

.....

FOR THE TRIBUNAL OFFICE Mr N Roche

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.