Case No: 2203381/21

EMPLOYMENT TRIBUNALS

Claimant	and	Respondent
Mr A Martin		Marylebone Serviced Offices Ltd

JUDGMENT ON RECONSIDERATION

Upon the Respondent's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the judgment of 16 August 2021 in the Claimant's favour, the application to reconsider is refused under Rule 72(1) as there is no reasonable prospect of the decision being varied or revoked.

REASONS

Introduction

1. The Claimant (a litigant in person, who represented himself at a Hearing on 16 August 2021) worked for the Respondent for just over four years, until 27 October 2020, as the Chief Operating Officer. By claim form lodged 11 December 2020, he claimed a redundancy payment, notice pay and holiday pay. His claim was also submitted but rejected against Mr Mohamad Kahil, the Respondent's sole director, because the Claimant did not obtain an Early Conciliation certificate in that name; the Claimant did not seek reconsideration of that decision. In any event, it seemed to me that the Claimant's complaints all lay against the corporate Respondent as his employer and not against an individual.

2. The Respondent did not submit a response. On 22 July 2021, the Claimant emailed the Tribunal to advise that he was ready to proceed to the Hearing and supplied an email address for Mr Kahil (though without copying Mr Kahil in). On 23 July 2021, the Regional Employment Judge caused a letter to be sent to the parties by post, which included the address given for the Respondent on the claim form, noting that it was possible the claim had not been correctly served on the Respondent. The Claimant replied repeating the same information that he had previously given.

3. On 5 August 2021, the Tribunal accordingly emailed the Respondent at Mr Kahil's address, advising that default judgment was about to be entered in the Claimant's favour unless the Respondent replied with information about when and how it had provided a response and reminding the parties that a Full Merits Hearing was listed for 14.00 on 16 August. Joining instructions were sent shortly before 17.00 the day before the Hearing.

4. No reply was received until 12 minutes before the Hearing was due to start. Mr Kahil sent one email then and another four minutes later. The first asserted that no official notification had been received of the Hearing until two weeks earlier and made allegations of misconduct against the Claimant. It asserted that the Respondent was about to enter bankruptcy. The second email stated that Mr Kahil was in Egypt and was unable to connect to the Hearing. These messages were not seen by me until after the Hearing had ended.

5. In neither email sent on 16 August did Mr Kahil explain why he had not responded sooner to the Tribunal's message of 5 August nor why no other person could represent the Respondent at the Hearing in his absence. He provided no evidence of being in Egypt nor of the allegations made against the Claimant, which would not in any event have explained why he was not entitled to the payments claimed. The Claimant had provided to the Tribunal evidence of three letters that he had written to Mr Kahil in November 2020, to which, on the face of them, it was clear there had also been no response.

Application for reconsideration

6. At the proceedings on 16 August, I considered whether to proceed in the Respondent's absence and concluded that I should do so, in the absence of any timely communication in response to the Tribunal's email of 5 August. The Respondent continued to trade according to the Companies House website and there were no notices in the Gazette that might have indicated pending or completed insolvency proceedings. Therefore, I entered default judgment pursuant to Rule 21 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) and awarded the Claimant the gross sum of £10,544.26.

7. On 24 August 2021, the Respondent submitted a written request for reconsideration of that decision, by email sent by a Ms Joanna Klemba, described as "Showroom Manager, Best Floorings". I note that Mr Kahil is also one of the two directors of a company called Best Floorings Solutions Limited and for that business, his correspondence address remains the address given on the ET1 for the Respondent at 259 Marylebone Road. Ms Klemba's email says however that the Respondent has not been at that address since March 2021, and indeed that was when it changed the registered address with Companies House.

8. In summary, the Respondent says in its reconsideration application that after the Claimant had left, it discovered "a large number of incidents of employee misconduct"; by inference, if not expressly, the employee in question is the Claimant. The email said that these incidents cost the Respondent "huge sums of lost revenue" and attached some 14 items purporting to be in support of the allegations.

9. **Rules**

The relevant Rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

70. Principles

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.

71. Application

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.

72. Process

(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.

10. The Tribunal's task at this stage is to consider whether reconsideration of the decision of 16 August 2021 is in the interests of justice. Where it considers there is no reasonable prospect of the decision being varied or revoked, under Rule 72(1), the application shall accordingly be refused.

Conclusions

11. This reconsideration application was considered at the initial (Rule 72(1)) stage on the papers. It was not considered necessary to seek the Claimant's response thereto. The Respondent's application provides no clear reason as to why it would be in the interests of justice to reconsider the decision.

12. The Respondent claims not to have appreciated that the Claimant had committed misconduct until some time (the exact period is not specified) after he left. The allegations include using the Company credit card for purchases from Amazon, falsifying internal occupancy reports, invoicing clients with bank details for another company ("Dorchester Estates"), failing to cancel a laundry contract, leading to a substantial invoice, and missing office plants.

13. On the face of it, the evidence supplied by the Respondent does include an invoice for an item unlikely to have been an expense legitimately incurred on the Respondent's behalf (gardening services performed at a property whose address matches the one given in the ET1 as the Claimant's home) and (again on the face of it) a payment made by a client, purportedly to the Respondent for office rental, pursuant to an invoice issued by the Claimant in the name of Central Serviced Offices Limited, which has a registered office address at 239 Marylebone Road, London. At that time, the Respondent's registered office (and the Claimant's workplace) was 259-269 Marylebone Road. The registered office for Dorchester Estates was and is 239 Marylebone Road.

14. Several attachments however suggest another employee of the Respondent was using the Respondent's credit card to purchase items such as dog food and headphones, with items being delivered to either to the Respondent's then office address at 259 Marylebone Road or to an entirely different address with a London E7 postcode. It is therefore impossible, to say whether, had these allegations been properly made at the time, the Respondent would have been justified in dismissing the Claimant without notice.

15. The Claimant's claim in any event is for a two-month notice period that he had actually worked, between 28 August and 27 October 2020 and for other payments to which he was entitled according to a payslip of 31 October 2020 but which he told me on oath had not in fact been paid. The Respondent has not sought to deny that this amount is owing. Its defence, to the extent it has produced one at all, is apparently that it has offset what it owes the Claimant against what it says he owes the Respondent.

16. Further, on 10 November 2020 (the same date as the Claimant's third chasing message to Mr Kahil), the Respondent through Mr Kahil appears to have emailed one of its clients (copied in to Ms Klemba, though at a different email

address, being one that appears to connect her to the Respondent) saying, "As you know, we have a legal case against [the Claimant] for the case as his action is considered steeling [sic] money from the company…". If that is correct, the Respondent appears already to have been taking steps in November to facilitate the recovery of any money it says is owed to it by the Claimant, by way of legal proceedings of its own.

17. That is however a separate issue from whether the Respondent owes the Claimant the amount that was awarded for a failure to pay him for the notice that he had worked, the accrued but untaken holiday outstanding at the termination date and his redundancy pay, all of which were awarded at the Hearing on 16 August 2021 in line with the Claimant's final payslip.

18. Further, the Respondent has failed to explain why it responded neither to the Claimant's November 2020 messages nor the Tribunal's August 2021 email; it has not provided any justification for failing to pay the Claimant his notice, holiday or redundancy payments, nor for failing to supply the evidence on which it now seeks to rely until after the proceedings had concluded, despite being on notice of both the fact that and when the Hearing would be taking place.

19. It is clear that Ms Klemba has been involved at various stages in this matter, though the exact capacity in which she is so involved is unclear, and no reason has been given for her non-attendance at the Hearing on 16 August or for the very late notification that Mr Kahil was in Egypt. Manifestly, he had email access and therefore he could have responded sooner or directed Ms Klemba to do so.

20. In the circumstances, there is nothing in what is now said by the Respondent which indicates that it is in the interests of justice to re-open matters. This application is refused as there is no reasonable prospect of the decision being varied or revoked.

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Employment Judge Norris
Date: 5 September 2021
JUDGMENT SENT TO THE PARTIES ON

06/09/2021.

FOR THE TRIBUNAL OFFICE