



EMPLOYMENT TRIBUNALS

Claimant: Mr & Mrs R Murphy
Respondent: Abel's Harp Limited

Heard at: Midlands (West) (by CVP) **On:** 7th May 2021
Before: **Employment Judge Butler** (sitting alone in Nottingham)

Representation

Claimant: Mrs T Murphy
Respondent: Mr M Ward, Agent

JUDGMENT

Judgement on reconsideration

The respondent's application for a reconsideration of the Judgement given on 18 July 2019 is refused

REASONS

1. This is now a long running matter. I first heard the case on the 18 July 2019 when Mrs Murphy appeared on behalf of herself and her husband and there was no attendance on behalf of the respondent. At that hearing, I heard evidence from Mrs Murphy that she and her husband were employees and were owed £1,600 by the respondent in wages for 3 weeks they worked time in hand at the commencement of their employment and a further week being the last week of their employment, none of which had been paid by the respondent. This amounted to £1,600 and I gave Judgment in that amount. This is recorded in my written reasons subsequently given after an out of time request by the respondent.

2. The respondent appealed to the Employment Appeal Tribunal and its request for written reasons emanated from that Appeal since they discovered that written reasons would be necessary before an appeal could be progressed. It was also suggested that they should apply for a reconsideration of my Judgment which they did, again out of time, and I reviewed the case on the papers. I refused to reconsider my Judgment. The Employment Appeal Tribunal then indicated I should hold a hearing to reconsider that Judgment which I did today.

3. Mr Ward, appearing on behalf of the respondent, was at a disadvantage because he is not a lawyer and had come to this case quite late in the day. He was not privy to some of the correspondence between the Tribunal and a person who was acting for the respondent back in 2019.

4. As I understand it, there are the following grounds upon which a reconsideration is sought:

I. The respondent did not receive a copy of the Claim Form or the Notice of Hearing for 18 July 2019;

II. the respondent did not receive a copy of the Judgment;

III. the respondent only became aware of the Judgment when the Bailiffs attended at its premises to effect recovery of the debt which the claimants had registered in the County Court; and IV. the claimants were not employees but self-employed contractors

5 I suggested to Mr Ward that there seemed to be one issue which had led to this dispute in the first place. That was the respondent's allegation that, when the claimants left the flat at the respondent's hotel in which they were permitted to live whilst carrying out their duties, there was a significant amount of damage which was repaired at a cost of £2,250. The claimants have always denied that they caused this damage. I asked Mr Ward if this assumption was correct and he said it was. To his credit, he said that, whatever the capacity in which the claimants worked for the respondents, they were entitled to be paid for the services they provided. He said the reason they were not paid was that they did not submit any invoices for the work undertaken. Accordingly, they were not paid and, had they submitted such invoices, the respondent would have wished to "have a conversation" with them regarding the cost of repairing damage to the flat.

6 Mr Ward could not point to any contractual term allowing the respondent to withhold payment of wages due to the claimants. On that basis, I considered that, as employees, they were entitled to be paid.

7 In relation to the allegation by the respondent that it did not receive the Claim Form or Notice of the Hearing, I referred Mr Ward to an email on the Tribunal file from Julie Cunningham, who I understand may have been the respondent's Accountant, dated 29 May 2019 confirming that she had received the Notice of Claim and intended to act for the respondent at the final hearing. The Tribunal file shows that the Notice of Claim and Notice of Hearing were sent together. I accept that Ms Hardy of the respondent had written to the Tribunal asking for correspondence to be sent to her home address and the Claim Form was sent to the hotel address. However, the test is whether the Claim and Notice of Hearing had come to the attention of the respondent and it clearly had. What Ms Cunningham did with the documents she had is something of a mystery and maybe a matter for the respondent to take up with her in due course.

8 The respondent also alleges that it did not receive a copy of the judgment given on 18 July 2019 but the Tribunal file shows quite clearly that **Case No: 13005595 / 2018**

8 The respondent also alleges that it did not receive a copy of the judgment given on 18 July 2019 but the Tribunal file shows quite clearly that **Case No: 13005595 / 2018** May 2021

this was sent to the respondent at Ms Hardy's home address as requested on 24 July 2019.

9 In relation to the allegation that the claimants were not employees, there was no evidence before me, either written or oral, to suggest they were self-employed. There is reference in the papers to a Self-Employed Contractor Agreement having been sent to the claimants but it was not included in the various documents forwarded to me for the purposes of this hearing and no further evidence was given in support of the contention they were self-employed.

10 As far as the amount of the Judgment is concerned, Mrs Murphy explained once more that this comprises 3 weeks' wages for the time worked "in-hand" at the commencement of her employment and a week's pay for the final week she and her husband worked. Mr Ward had no documents to show that this element of the claim had been improperly made.

11 Rule 70 of the Rules of Procedure allows the Tribunal to reconsider its earlier Judgments. Whilst there are a number of factors which may be taken into account in deciding whether to reconsider a Judgment, the essential reason for so doing is that it is in the interests of justice. But this is a case where the respondent has clearly received notice of the Claim, notice of the Hearing it did not attend, notice of the Judgment it said it did not receive and has produced no evidence which leads me to consider that the claimants were not employees. As for the issue over the repairs to the flat vacated by the claimants, this is not a dispute which falls within the jurisdiction of the Tribunal.

12 For the above reasons, I do not consider it is in the interest of justice to vary or revoke my earlier Judgment and I confirm my original decision

this was sent to the respondent at Ms Hardy's home address as requested on 24 July 2019.

9 In relation to the allegation that the claimants were not employees, there was no evidence before me, either written or oral, to suggest they were self-employed. There is reference in the papers to a Self-Employed Contractor Agreement having been sent to the claimants but it was not included in the various documents forwarded to me for the purposes of this hearing and no further evidence was given in support of the contention they were self-employed.

10 As far as the amount of the Judgment is concerned, Mrs Murphy explained once more that this comprises 3 weeks' wages for the time worked "in-hand" at the commencement of her employment and a week's pay for the final week she and her husband worked. Mr Ward had no documents to show that this element of the claim had been improperly made.

11 Rule 70 of the Rules of Procedure allows the Tribunal to reconsider its earlier Judgments. Whilst there are a number of factors which may be taken into account in deciding whether to reconsider a Judgment, the essential reason for so doing is that it is in the interests of justice. But this is a case where the respondent has clearly received notice of the Claim, notice of the Hearing it did not attend, notice of the Judgment it said it did not receive and has produced no evidence which leads me to consider that the claimants were not employees. As for the issue over the repairs to the flat vacated by the claimants, this is not a dispute which falls within the jurisdiction of the Tribunal.

12 For the above reasons, I do not consider it is in the interest of justice to vary or revoke my earlier Judgment and I confirm my original decision

Employment Judge Butler

Date 1 June 2021