



EMPLOYMENT TRIBUNALS

Claimant: D Devlin

Respondent Hough Green Garage Limited

JUDGMENT ON A RECONSIDERATION

The Judgment made pursuant to Rule 21 of the Employment Tribunals Rules of Procedure 2013, dated 18 August 2021 and sent to the parties on 23 August 2021, is revoked. The claimant's claim of unauthorised deductions from wages is restored and shall proceed to a hearing.

REASONS

1. On 18 August 2021, the Tribunal gave judgment in the sum of £880.00 for unauthorised deductions from wages pursuant to section 23 of the Employment Rights Act 1996 ("ERA"). The Judgment was issued in accordance with Rule 21 because it was believed at the time that the respondent had failed to enter a response to the claim by the statutory deadline of 14 July 2021. The Judgment was sent to the parties on 23 August 2021. I was the Employment Judge who signed that Judgment.
2. On 23 August 2021, immediately upon receipt of the Judgment by email, the respondent contacted the Tribunal to raise a concern that the Judgment had been made prior to a hearing listed on 21 October 2021 and in their absence. The respondent has produced evidence that they had in fact submitted a response to the claim on 13 July 2021 together with a number of documents in support. An issue therefore arises as to whether the Judgment should be reconsidered.

Rules of Procedure

3. Rule 70 of the 2013 Rules of Procedure empowers the Tribunal, on its own initiative or on the application of a party, to reconsider any Judgment. In addition, Rule 73 provides for reconsideration by the Tribunal on its own initiative subject to the procedure in Rule 72(2).
4. Rule 72(2) provides that, unless a reconsideration is refused under Rule 72(1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any written response and the views of the parties, that a hearing is not necessary in the interests of justice.
5. The test is whether it is necessary in the interests of justice to reconsider the Judgment. Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances which could have a material bearing on the outcome.

Conclusion

6. On 2 September 2021, in accordance with Rule 72(2), the Tribunal wrote to the parties to tell them that I considered that a reconsideration hearing was not necessary in light of the apparent administrative error that has led to a Judgment being issued under Rule 21. The Tribunal also invited the parties to make any further representations in writing on the issue of reconsideration.
7. On 14 September 2021, the claimant wrote to the Tribunal to argue that the judgment should not be reconsidered. The claimant contended that he is owed a large amount of wages by the respondent and the non-payment has caused him financial hardship, that he has contacted the respondent seeking payment but to no avail, and that he believes that he is not the only person to be in that position. Whilst I have sympathy for the claimant's situation, these are not matters which I can take into account in my decision on reconsideration.
8. Having considered the Tribunal file and the evidence of submission of the response together with the representations of the claimant, I am bound by the Tribunal Rules to revoke the judgment and restore the claim for hearing. It is apparent to me that the respondent had properly submitted a response to the claim, on the response form ET3, to the Tribunal within the statutory time period for so doing. However, due to an administrative oversight, the response was not linked to the file at the time, or at all until the respondent brought the matter to the Tribunal's attention. The respondent is not at fault and is entitled to defend the claim.

9. I am therefore satisfied that there are special circumstances which require me to revoke the Judgment dated 18 August 2021 which was sent to the parties on 23 August 2021. It is in the interests of justice that the claim shall be restored and shall proceed to hearing.

Employment Judge Batten
Date: 24 September 2021

JUDGMENT SENT TO THE PARTIES ON:

24 September 2021

FOR THE TRIBUNAL OFFICE