



EMPLOYMENT TRIBUNALS

Claimant: Mr J Pilling

Respondent: ICSKILL.COM Limited

Heard at: Manchester (on the papers) **On:** 4 October 2020

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: Written representations

Respondent: No attendance or representations

JUDGMENT ON RECONSIDERATION

It is the judgment of the Tribunal that:

1. The judgment of 11 June 2021, sent to the parties on 14 June 2021, is reconsidered and is revoked.
2. The claimant's claim of breach of contract will proceed to a final hearing to be heard with an estimated length of hearing of **three hours** on **7 January 2022** at **Manchester Employment Tribunal, Alexandra House, 14-22 The Parsonage, Manchester, M3 2JA** commencing at **10.00am**.
3. The Tribunal makes the following Case Management Orders for the purposes of the claim, varying the Orders sent to the parties on 7 April 2021, to provide (save where there has already been compliance) :
 - (a) Step 1 – by **18 October 2021**.
 - (b) Step 2 - by **25 October 2021**.
 - (c) Step 3 – by **1 November 2021**.
 - (d) Step 4 - by **22 November 2021**.

4. The issues to be determined are set out in para. 14 below. If either party disagrees that they are indeed the Issues, or are incomplete, they are to notify the Tribunal in writing within 14 days, stating why they are inaccurate or incomplete.

REASONS

1. The Tribunal convened to hear the claimant's application for reconsideration of the judgment issued by the Tribunal on 11 June 2021 and sent to the parties on 14 June 2021, whereby the claim was struck out. This followed receipt of information from the respondent that the claimant had not complied with the case management orders sent to the parties on 7 April 2021.

2. The Tribunal accordingly issues a strike out warning to the claimant on 5 June 2021, on the grounds that the claim was not being actively pursued. The claimant was required to respond by 8 June 2021, but did not do so. On 11 June 2021, therefore, the Tribunal struck out his claim.

3. The claimant made application for reconsideration of this judgment by email on 14 June 2021. The Tribunal had notified by email of 11 June 2021 that the hearing had been cancelled, and he sent into the Tribunal further emails on 13, 14 June 2021, 25 June, 1 July and 8 July 2021. He attached to these emails various documents showing the IT and telephone service issues he had experienced.

4. The basis upon which the claimant sought reconsideration was that he had been the victim of a cyberattack, which had affected his internet devices, mobile phone, and even his landline number. He had not been able to communicate for several months. He regained service around 13 June 2021, at the same time, of course, as the Tribunal had struck out his claim.

5. The claimant had not copied the respondent into this email communication with the Tribunal, so on 23 July 2021 the Tribunal wrote to the respondent advising it of the application, and the claimant's emails.

6. No reply was received from the respondent, and the application has therefore been considered by the Employment Judge without a hearing (on the papers, hence the Code P in the heading), then parties being advised of this date.

7. Reconsideration is governed by rule 70, which provides that a Tribunal can reconsider any judgment it makes if it is in the interests of justice to do so. Application must be made within 7 days, and the claimant clearly did so.

8. As the claimant had provided an explanation for his failure to adhere to the previous case management orders, and clearly intends to pursue this claim, the Employment Judge considers it would indeed be in the interests of justice that he be allowed to do so. The respondent has not advanced any counter argument as to why it would not be.

9. The Employment Judge accordingly does reconsider the judgment, and revokes it. The claim will proceed, and a new hearing date has been obtained. The

case management orders have been revised with fresh timetable, which must now be adhered to.

The Issues

10. Taking the opportunity, however, to consider the claim, and to try to identify the issues, the Employment Judge notes that the sole claim is breach of contract, which arises from the claimant successfully applying for employment with the respondent, which was due to commence on 30 March 2020.

11. It is unclear what actually happened on, or shortly after 30 March 2020. The claimant appears to consider that the contract started, but his start date was delayed by the respondent, and was then terminated on 8 June 2020, when the respondent informed the recruitment agency that it was no longer taking on new employees, and was making redundancies. The claimant is taking this as the date of the termination of his contract. He then went to ACAS early conciliation on 18 August 2020, obtaining a certificate on 16 September 2020. He presented his claim on 10 October 2020.

12. The response disputes the claimant's account. The respondent contends that the claimant was unavailable to start on 30 March 2020, and that it was he who rendered the contract "null and void", as he never started working for the respondent.

13. The claimant, whilst he makes only a breach of contract claim, also seeks payment of wages which the respondent "should have" been paying him since 30 March 2020. He seeks notice pay, which he has put at 4 weeks. He may care to consider the fact that, absent any express contractual entitlement to more, his statutory entitlement (if the right to notice is proven) would be one week.

14. A further potential issue seems to be that if the respondent did breach the claimant's contract of employment, but it was earlier than 8 June 2020, (in fact any time before 15 May 2020, being three months before the claimant first contacted ACAS) any such claim would be out of time.

15. A number of issues therefore arise.

- a) Was there ever a completed contract of employment?
- b) If so, what were its terms as to when the claimant would start work?
- c) If so, what were its terms as to whether the claimant would be entitled to be paid before he actually started work?
- d) Was the claimant ready willing and able to start work on 30 March 2020?
- e) If so, why did the claimant not start work?
- f) What was the claimant's contractual status from 30 March 2020 to 8 June 2020?
- g) Is the claimant entitled to be paid for that period?

- h) Did the respondent terminate the contract of employment on 8 June 2020?
- i) Did the respondent terminate the contract of employment before 8 June 2020 and if so, did it do so any earlier than 18 May 2020, so that the claimant's claim was presented out of time? If so, was it not reasonably practicable for the claimant to have presented the claim in time?
- j) To what notice was the claimant entitled, and what, if any, notice pay is he entitled to?

15. It is hoped that this will assist the parties and the Tribunal to determine the claim(s) at the next hearing, or to seek a resolution through ACAS, if this is possible.

Employment Judge Holmes
Dated : 4 October 2020

JUDGMENT, REASONS AND ORDERS
SENT TO THE PARTIES ON

7 October 2021

FOR THE TRIBUNAL OFFICE

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.