



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Cuconu

v

Beauty Centre Limited

JUDGMENT ON RECONSIDERATION

Upon the Claimant's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the decisions:

In emails dated 17 September, 6 and 8 October 2021 the Respondent says:

(a) 17 September - *I am writing in respect of the hearing that I was suppose to (sic) attend on 10 September at 2pm as I was informed by one of your colleagues Andres Stoddard who was in charge of the case. Then the time was changed and I was not informed. I sent an email on the day to check so I would not miss it but no one responded to me and 2 of my other emails were not responded. I assume the hearing went ahead without me. Please let me know what are the options I have currently and what was the outcome of the hearing.*

(b) 6 October - *I missed the hearing because of poor communication on your behalf and the fact there was lack of staff and nobody let me know regarding change of the hearing time. Now it seems my employee is receiving emails from tribunal with the decision. I didn't even get a chance to attend the hearing, to see the decision or appeal in case I do not agree.*

(c) 6 October - *Please address to my issue as soon as possible as I have the right to participate in this and not everything to be decided without my knowledge and attendance.*

(d) 8 October - *Is there a way to appeal to this?*

The Judgment of the Employment Tribunal is that there is no reasonable prospect of the judgment of 22 September 2021 (sent to the parties on 6 October 2021) being varied or revoked. The claimant's reconsideration application dated 6 October 2021 is dismissed.

REASONS

1. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative 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 judgment may be confirmed, varied or revoked.
2. An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record was sent to the parties.

In this instance the application for reconsideration was only sent to the court and not to the Claimant.

3. Rule 71 requires that the reason for reconsideration should be set out. In this instance the respondent asserts the reason as follows:
 - a. *'the time was changed and I was not informed.'*
 - b. *'I missed the hearing because of poor communication on your behalf and the fact there was lack of staff and nobody let me know regarding change of the hearing time.'*
4. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.
5. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations.
6. The procedure upon a reconsideration application is for the Employment Judge that heard the case or gave the judgment in question to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interest of justice.

There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.

7. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application is to act as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be considered at a reconsideration hearing.
8. In this case, I issued a judgment on 22 September 2021 ('the judgment') in favour of the claimant.
9. The reconsideration application was made within the prescribed time limit the judgment having been sent to the parties on 6 October 2021.

Interests of Justice

10. Judgments can be reconsidered by a Tribunal on its own initiative or on the application of a party where it is necessary in the interests of justice to do so. The phrase "interests of justice" is not defined in the new rules but is likely to include instances where:
 - a. The judgment was wrongly made as a result of an administrative error.
 - b. A party did not receive notice of the proceedings which led to the judgment.
 - c. The judgment was made in the absence of a party.
 - d. New evidence has come to light since the conclusion of the hearing (as long as its existence could not have been reasonably known or expected at the time of the hearing).

The tribunal will not agree to reconsider the judgment just because a party disagrees with it. There must be valid reasons for a reconsideration. A Judge has power to refuse an application for a reconsideration if they think it has no reasonable prospect of success.

11. At 9:43am on 10 September the court sent an email to the claimant and the respondent that the hearing had been moved forward to 12 noon. The email address used for the respondent is the same one she used to contact the court on 17 September, 6 and 8 October 2021.

It is therefore incorrect to say the court did not notify her of the change of hearing time.

The Respondent asserts she missed the hearing because of a failure on the part of the court to notify her of a change in the time of the hearing on 10 September.

12. Chronology

The chronology is important because it shows the respondent's conduct throughout these proceedings. The respondent has demonstrated an unwillingness or inability to accept the warnings of the court that in the absence of a response to claim her participation in the hearing would be at the discretion of the judge. It records a number of occasions when the information she gave the

court is demonstrably incorrect. It also demonstrates that when the respondent applied for the hearing date to be postponed and the court responded that the hearing would go ahead she interpreted this as a failure to respond to her request.

- 12.1. The ET1 claim form was lodged with the tribunal on 5 April 2021.
- 12.2. The respondent was sent a copy of the claim form on 22 April 2021. Due to an error on the part of the claimant it was sent to the wrong address.
- 12.3. On 10 May 2021 the claimant notified the court of an error in the respondent's address [from Cochineal House; incorrect to Cochrane House; correct]. On 23 June the court acknowledged her email and confirming copy documents had been sent to the correct address.
- 12.4. 23 June the court sent a copy of the claim to the respondent at Cochrane House.

The letter from the court included the following information:

- i. Response required no later than 21 July 2021
 - ii. Failure to submit a response may result in Judgment being entered against the respondent and
 - iii. The respondent may only be permitted to participate in the hearing to the extent permitted by the judge
 - iv. Time to submit a response may be extended on application under Rule 20.
 - v. Final hearing will take place at 2pm 10 September 2021 by BTMeetMe.
- 12.5. 29 June claimant amended her claim by reducing the amount sought to take account of money received from the claimant.
 - 12.6. 30 July the court acknowledged the amendment to the claim – copied to the respondent.
 - 12.7. 9 August letter to the respondent from the court that in the absence of a response to claim judgment may now be entered and acknowledging that respondent was entitled to be notified of the hearing but would only be allowed to participate to the extent allowed by the judge.
 - 12.8. 9 August claimant ordered to provide a 'schedule of loss' to the court and respondent by 23 August 2021.
 - 12.9. 16 August respondent wrote to the court asking for the hearing to be postponed until she returns from an 'urgent family occasion' at the end of September 2021. She asserts she has spoken with the claimant who would be ready to wait also it would give her an opportunity to resolve the case.

- 12.10. 3 September letter to the parties to amend a typographical error which referred to the hearing as 9 instead of 10 September 2021.
 - 12.11. 3 September letter to the parties reminding the respondent she has not entered a response and is not entitled to take part in the hearing without one and claimant to confirm by 8 September if she agrees to the hearing of 10 September being postponed.
 - 12.12. 4 September claimant email to the court that she does not consent to hearing of 10 September being postponed.
 - 12.13. 5 September respondent email to the court asserting a call scheduled for 31 September 2021 and that she had a chat with 'your' colleagues who will be 'assisting me as advisors'.
 - 12.14. 6 September court letter to parties that the hearing will proceed on 10 September 2021 and the claimant must comply with the case management orders of 9 August 2021.
 - 12.15. 6 September email from respondent that she asked in August for the hearing to be postponed.
 - 12.16. 7 September court letter to the parties, the respondent's emails have been received. The hearing will go ahead on 10 September and since the respondent has not filed a response their participation in the hearing will be at the judge's discretion.
 - 12.17. 10 September 9:43am court email to the parties informing them the hearing had been brought forward to 12 noon.
 - 12.18. 10 September 12 noon full merits hearing – judgment entered in favour of the claimant
 - 12.19. 17 September email from the respondent that she was not informed of the change of time to the hearing. She added she sent an email to the court on the 10 September so she would not miss the hearing but did not receive a response. (Response was sent on 7/9/21 12.16. above)
 - 12.20. 6 October email from the respondent – text set out at the beginning of this document.
 - 12.21. 6 October email from the respondent – text set out at the beginning of this document.
 - 12.22. 8 October email from the respondent – text set out at the beginning of this document.
13. The respondent was notified on no less than 4 occasions that she had not filed a response and her participation in the hearing was at the discretion of the judge;

the first of the 4 being a warning and the remaining 3 that since there had been no 'response' her participation in the hearing would be at the discretion of the judge.

14. In her email of 6 October 2021, the respondent wrongly asserts she had a right to take part in the hearing. Given her failure to file a response or file a Rule 20 application for extension of time to file a response or take notice of any of the warnings that her participation in the hearing was at the discretion of the judge; her assertion is clearly incorrect.

Rule 21 (3) of the tribunal rules states:

*The respondent shall be entitled to notice of any hearings and decisions of the Tribunal **but**, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.*

15. The respondent instead sought to have the hearing postponed stating:
- a. The claimant was content to wait to the end of September. (She was not para 12.12. above).
 - b. She had spoken with staff at the court who would assist her in the hearing; (not being privy to that conversation I cannot say with certainty this was incorrect however it is highly unlikely given court staff would never be permitted to do so and unless they were very new all court staff know this); and
 - c. A telephone conference has been set for 31 September. This is untrue and there are only 30 days in September.
16. Given the respondent's conduct in these proceedings namely:
- a. Failing to file a response by the due date;
 - b. Failing to apply for an extension to file a response;
 - c. Ignoring additional warnings (3) that in the absence of a response her participation in the hearing would be at the judge's discretion;
 - d. Asserting the claimant was content for the hearing to be delayed to the end of September when in fact she was not;
 - e. Asserting a new hearing was set for 31 September when it was not;
 - f. Asserting court staff had agreed to assist her in that hearing;
 - g. Telling the claimant, the hearing had been postponed when it had not (when giving evidence the claimant asserted a few days before the hearing the respondent had told her the hearing would not be going ahead);
 - h. Telling the court, she was not available for the hearing on 10 September because of what she variously describes in emails as an 'urgent family occasion'/'family emergency'.

During the hearing the claimant gave evidence she understood the respondent was on holiday and confirmed she returned to work before the hearing. The claimant may have been mistaken as to the reason for the respondent's absence but; given they work closely together; in the absence of more persuasive evidence from the respondent and given the tendency of the respondent to give the court inaccurate information; I accepted the claimant's evidence she believed the respondent was on holiday.

17. The test to be applied in these circumstances as set out at paragraph 9 above is if it is 'in the interests of justice' to do so. Only 1 of the 4 examples applies in this case namely the judgment was made in the absence of a party. Having examined the respondent's conduct in these proceedings I am satisfied she was given every opportunity to attend the hearing and that in my view her absence was not accidental on her part.
18. I am satisfied there is no realistic prospect of the original decision being varied or revoked. In my view the respondent's conduct throughout these proceedings has been scandalous, unreasonable and vexatious. I am satisfied it is not in the interests of justice to reconsider the judgment in the circumstances. Her failure to heed warnings and her conduct in repeatedly providing information to the court which subsequently proves to be inaccurate would be unjust to the claimant and would infringe the principle that it is in the public interest that there should be finality in litigation.
19. 16. In the circumstances, the reconsideration application is refused.

Employment Judge H Allen
Date: 28 October 2021