Case No: 1802829/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr F Webb

Respondent: YorMed Limited

UPON APPLICATION made by email dated 22 July 2021 to reconsider the judgment dated 1 July 2021 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and (by agreement with the parties) without a hearing,

JUDGMENT

1. The Judgment is confirmed

2. The claimant's application for costs is refused

REASONS

The parties have confirmed that there are content for this application to be dealt with on the papers. The tribunal has considered the respondent's application for a reconsideration received on 22 July 2021, further representations received on 10 August in response to the tribunal's request for clarification of the grounds of the application, the claimant's written submission dated 26 August and a further written submission from the respondent received on 27 August.

The claimant's tribunal application was sent to the correct postal address of the respondent on 21 May with a requirement for a response to be submitted by not later than 18 June 2021. The respondent does not suggest that the claim form was misaddressed or that there was at that time any difficulties which meant that post could not be received at that address or the address could not be accessed to collect post. Whilst in the normal course of events items sent by post may not be delivered, such occurrences are infrequent and the tribunal is unconvinced by the respondent's assertion that they simply did not receive the claim.

In any event, the respondent was aware of there being a tribunal complaint in respect of which a response was required by 18 June from conversations with

ACAS. The respondent's own version of those conversations makes it clear that the respondent was aware that proceedings had been brought which needed to be responded to by this date. Either the respondent was well aware of the content of the claimant's complaint or unreasonably showed no interest and made no effort in obtaining a copy from the tribunal or ACAS, if the claim form had not in fact been received.

No agreement was reached through ACAS settling the claimant's complaint. The respondent did not fail to respond in circumstances where there had been a binding settlement agreement concluded through ACAS.

Nor can the respondent have reasonably considered that any such agreement had been reached. The respondent's position is that it believed that the matter had been concluded through ACAS on 25 May 2021. The respondent cannot however have held that belief. Whilst the claimant had put forward a proposal on that date, which at the time was acceptable to the respondent, there were matters which remained to be resolved. The respondent for instance on that date asked that the claimant returned all property. The respondent was as to specify the list of items to be returned. It appears that this list of items was not provided. Furthermore, the exact terms of an agreed reference to be provided remained outstanding.

On 2 June ACAS again confirmed to the respondent that the response should be submitted no later than will 18 June. The respondent confirmed to ACAS that the COT3 wording was acceptable, but on 18 June ACAS sought the respondent's response to proposed COT3 terms saying it was understood that the response was due that day. Clearly ACAS was confirming a position that no agreement had been concluded. The respondent maintains that on that date there was a telephone conversation with ACAS where the respondent advised ACAS that it was awaiting the removal of a line added by the claimant's solicitors to the proposed reference wording. Clearly, therefore, the respondent knew that the matter had not been resolved. There is no explanation for its failure then to seek to submit to the tribunal its response.

The tribunal wrote to the parties on 13 August seeking the parties' comments on the reconsideration application with reference to the tribunal's initial considerations. The respondent was asked if it had in fact any complete/partial defence to the claims.

The respondent has responded referring to the claimant's alleged use of cannabis, how he purchased it, how often and that he admitted on one occasion to working for the respondent whilst under the influence of it. Reference was then made to a transcript of a WhatsApp group chat within which the claimant is alleged to have breached the conditions of his employment contract on 34 occasions whilst claiming to be off sick for stress.

The claimant's complaints in these proceedings are however seeking payment for hours worked where there was a shortfall in the payments he received and for an amount in respect of accrued but untaken holiday entitlement as at the termination of his employment. The respondent does not address those claims and how it would dispute them. The matters it raises regarding the claimant's alleged misconduct provide no arguable defence to the wages claims he has brought.

On the basis of the foregoing it is not in the interests of justice for the tribunal to revoke the Judgment issued in the claimant's favour. That Judgment is therefore

confirmed.

The claimant's application for costs arising out of this reconsideration application is refused. A respondent receiving a Judgment has the right to apply for a reconsideration. The respondent has not acted unreasonably in making such application or in the way it has pursued it. Whilst unsuccessful, it cannot be said that the application had no reasonable prospect of success.

Employment Judge Maidment

4 November 2021