



EMPLOYMENT TRIBUNALS

Claimant: Mr Ross Cooper
Respondent: Quack Recruitment Limited

**At a Reconsideration Hearing Heard
at the Employment Tribunal by CVP**

Heard at: Nottingham **On:** 24 November 2021

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: In person
Respondent: Glynis Duffy, Senior Legal Consultant

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

The Employment Judge gave Judgment as follows:

1. The application for reconsideration of the Judgment made on 28 April 2021 succeeds.
2. The Judgment is revoked.

REASONS

Background to this Hearing

1. The Claimant presented his claim to the Tribunal on 5 February 2021. He had been employed by the Respondents from 26 October 2020 until 19 December 2020. He claimed;

- Unfair dismissal.
 - Notice pay.
 - Holiday pay.
 - Wages.
 - Race discrimination.
2. The claim was served on the Respondent at the address given by the Claimant namely 27-31 Lichfield Street, Walsall on 10 February 2021. A response should have been received by the Tribunal by 10 March 2021.
 3. The claim of unfair dismissal was struck out by the Tribunal on 23 February 2021 because the Claimant did not have sufficient service to enable him to make such a claim.
 4. A default judgement was given by my colleague Employment Judge Ahmed on 13 April 2021 under Rule 21 of the Employment Tribunal Rules of Procedure 2013 and a remedy Hearing was set for the 28 April 2021 because the Respondent's had failed to file any response to the ET1.
 5. At that hearing I made the following Awards;
 - Non-payment of wages £201.96.
 - Non-payment of holiday pay £408.51.
 - Breach of contract in respect of notice £110.16.
 - Damages for race discrimination £2028.49.
 6. On 6 May 2021 the Respondent's representative wrote to the Tribunal with an application to set aside the Judgment. The letter informed the Tribunal that they had only just received notification of the proceedings and that it had not been served at the Company's registered office. They requested a copy of the ET1 so that they could prepare their response.
 7. They did not receive any response to this or subsequent letters until 3 September 2021 when they were finally sent the ET1 and notice of claim which resulted in them forwarding an ET3 together with their renewed application to set the Judgment aside.
 8. It appeared to me that the application should succeed, and I wrote to the parties setting this out by way of an email that was sent to the parties on 17 September 2021.
 9. Mr Cooper objected to the application and hence the hearing today.

The Hearing Today

10. I have seen the reconsideration bundle index and the witness statement of Mr Bishop.
11. Mr Cooper could add little other than to say that he objected to the application.

The Law

12. Rule 70 of the Employment Tribunal Rules of Procedure provides;

- A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 decision (the original decision) may be confirmed, varied or revoked. If it is revoked it may be taken again.

My Conclusion

13. I am satisfied that in this case the reason that no response was received by the Tribunal from the Respondent was that they had not received notification of this claim. It had not been sent to their registered office.
14. The Respondent's when they were aware of the claim acted promptly and made their application to the Tribunal within a matter of days. The claim is disputed, and the Claimant has received an Award for in excess of £2000 compensation for race discrimination which is potentially a windfall.
15. I have considered the ET1 and the ET 3 and there are triable issues which can only be determined by a full hearing. Whilst the Claimant may suffer the prejudice of not being able to enforce his judgment that is far outweighed by the prejudice to the Respondents who should be allowed to present their case to the tribunal. I am satisfied that it is in the interest of justice to reconsider the Judgment and to revoke it. There are triable issues that must be heard by a full Tribunal.

Listing a Final Hearing

16. The claim will be heard by an Employment Judge sitting with members by CVP on **Tuesday 15 March 2022 at 10.00am. 1 day** has been allocated to hear the evidence and to determine the case. The parties should join **by 9.30am** on the morning of the hearing to deal with any connectivity issues.

The Issues

17. The amounts the Claimant claims for notice pay, holiday pay and wages are all in dispute and I asked the Claimant to clarify his claims of race discrimination. He relies on the fact that he described himself as being Zimbabwean.
18. He says that he has received less favourable treatment than other workers who were engaged by the Respondent who were British. He complains of 3 acts of less favourable treatment namely;
1. That on 22 December 2020 he was not given 24 hours' notice as required under his contract and was refused entry to the site by the Respondent.

2. On 1 December 2020 whilst on a bus the driver of another bus came up to him and told him to get off the bus on the directions of the Respondent.
3. On various dates not being allowed to take proper breaks and not being paid properly at the conclusion of his employment.

CASE MANAGEMENT ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant and the Respondent shall send each other a list of any document they wish to refer to at the hearing or which are relevant to the case **by 21 December 2021**. They should send each other a copy of any of these documents if requested to do so.
2. The Respondent shall then prepare enough copies of the documents for the hearing. The documents should be fastened together in a file to open flat. The file of documents shall be indexed. The documents shall be in logical order. All pages shall be numbered consecutively. The Respondent shall provide a copy of this file to the Claimant **by 18 January 2022**. **Three copies of the file shall be provided to the Tribunal by 7 March 2022**.
3. The Claimant and Respondent shall prepare full written statements of the evidence they and their witnesses intend to give at the hearing. No additional witness evidence may be allowed at the hearing without permission of the Tribunal. The written statement shall have numbered paragraphs. The Claimant and Respondent shall send the written statement of their witnesses to each other **by 15 February 2022**. The Respondent shall be responsible for providing **3 copies of the witness statements including the Claimant's for use by the Tribunal by the 7 March 2022**.

Employment Judge Hutchinson

Date: 7 December 2021

JUDGMENT SENT TO THE PARTIES ON

10 December 2021

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FOR THE TRIBUNAL OFFICE

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