EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr C Jamil	**v**	**ICTS UK Ltd**

Heard at: Watford by CVP
On: 25 November 2021

Before: Employment Judge R Lewis

Appearances

For the Claimant: Mr I Chukwudolue, solicitor
For the Respondent: Mr A Burgess, consultant (Peninsula)

RESERVED JUDGMENT

1. The judgment of 4 March 2021 is revoked.

2. The response is accepted.

3. The claimant's costs application is refused.

4. By separate Case Management Order, a preliminary hearing has been listed to take place on 10 February 2022.

REASONS

Introduction

1. This was the respondent's application for reconsideration of a judgment issued by Employment Judge Ord on 4 March 2021 under the provisions of rule 21 (no response).

2. I had an agreed bundle of about 100 pages. The respondent had prepared statements from Ms Louw and Ms Wells, both of whom were available to give evidence. Mr Chukwudolue said that he had no questions for either, and I took both statements as read.

3. At the time of this hearing I did not have the tribunal's paper file. I heard all submissions, and informed the parties that I would write to them on receipt of the paper file if it contained anything material, and give them the opportunity of further submissions in writing. Both sides agreed to this.

4. The history of this matter was that the claimant was agreed to have been employed by the respondent for four years, and that he was dismissed on 29 or 30 July 2020. Day A and B were respectively 7 and 22 October 2020. The claim was presented on 20 November.

5. On the ET1 the claimant gave the respondent's address as Tavistock House, London WC1. Mr Burgess agreed that the address was entirely correctly stated.

6. The tribunal file shows that the claim was posted to the correct address on 8 December, stating that the response was due on 5 January. No response was received, and on 4 March 2021 the tribunal informed the parties that Judge Ord had signed Judgment under rule 21, and directed that a remedy hearing be listed.

7. The respondent's business is to provide on site security. The great majority of its employees therefore are site-based, with a relatively modest office presence.

8. Ms Wells, Office Manager, gave written evidence that since the first lockdown in March 2020 the Tavistock House office had not been in full use, and that at the time in question, limited numbers of staff visited the office, checked post, and scanned and forwarded items to the relevant operational colleague.

9. The bundle showed that notification of the Rule 21 Judgment in this case was sent to Ms Louw, HR Manager, on 11 March 2021, and passed on by her to Mr Burgess the next day. Peninsula had standing instructions to defend the respondent's tribunal claims, and Mr Burgess was the named point of contact.

10. On 22 March Mr Burgess wrote to the tribunal to say that he was instructed, and to ask for a copy of the ET1, so that it could be answered. He chased this request on 21 April. The tribunal replied on 28 April with copies of the ET1 and correspondence, and on 19 May Peninsula sent the tribunal its ET3, draft Grounds of Resistance, and application to extend time. The claimant opposed the application.

11. I heard submissions from both sides, then reserved so that I could notify the parties if the tribunal file shed any light on service of the claim. In the event, the tribunal file showed that the claim appeared to have been properly served on 8 December at the correct address; and that the next items on the file were two letters from the tribunal, one dated 4 March, and one undated, informing the parties that Rue 21 Judgment had been issued. I wrote to the parties to that effect on 30 November, asking for any reply by Wednesday 7 December. As 7 December was Tuesday, I took no further

action in this matter until Wednesday 8 December. In the event there was no reply from either party.

Explanation of delay

12. The respondent's evidence and case was that the ET1 had not been received. The bundle showed that at about the same period, five other ET1s sent to Tavistock House had been properly processed and defended, using the above procedure. It had had no knowledge of this claim until receipt of the Rule 21 notification, after which it had done all it could, with reasonable speed and efficiency, to answer the claim. It had no reason to delay defending the claim, and could not benefit from doing so.

13. The claimant's reply was that the respondent's explanation was either not true, or was the result of its own negligence. Mr Chukwudolue suggested that it had chosen to do nothing about this case until spurred into action by receipt of the Judgment, and had then delayed a further two months in service of the ET3.

14. I accept that no one can prove whether the ET1 was properly posted, delivered or received. There was no evidence to support the claimant's suggestions that the claim had been received and understood, and then either a decision then taken to ignore it, or carelessness which led to it being overlooked.

15. A powerful element in leading me to accept the respondent's explanation is the combination of common sense factors in its favour, which were that (1) at about the same time, it accepted and defended other claims; (2) it had no reason to treat this claim any differently from the other five; (3) ignoring or not defending this claim was not in its own interests; and (4) all its actions since 11 March 2021 have been consistent with the ET1 not having seen served, with the exception, perhaps, of the minor delay between 12 and 22 March.

Arguable defence

16. I accept that a reading of the ET1 and the draft ET3 shows an arguable defence to the claims. I note the following points in particular.

17. There is a major arguable issue on reason for dismissal, which in turn impacts on procedure and ACAS uplift. The claimant's case is that without any process being followed, he was dismissed because of his conduct on 9 July 2020. The respondent's case is that he was dismissed for some other substantial reason, after its customer (Amazon) exercised its right to require the claimant's removal from its site. Its case is that the claimant was dismissed for some other substantial reason, namely Amazon's removal, and his own failure to pursue other vacancies. That explains the speed of response, the absence of procedure or investigation, and the failure to follow any conduct related procedure before dismissal.

18. There is a major arguable issue on whether discrimination claims based on the alleged actions of Mr PP can be heard, as he is said to be an employee of Amazon, which is not party to this claim and is not accepted by the respondent to have been its agent. As result, the claimant may have difficulty in attaching liability for his actions to this respondent.

19. There is a major arguable issue on whether a number of the claimant's broad general complaints of discrimination are capable of trial without a great deal more clarification.

Balance of prejudice / interests of justice

20. I accept that acceptance of the response will cause prejudice to the claimant, in the sense that he will face a long delay, and, I anticipate, a fully contested claim. I accept that rejection will prejudice the respondent, which will face a liability which, possibly through no fault of its own, it has had no opportunity to defend.

21. I share the parties' observations about the level of delay in the tribunal system. However the tribunal's function is to give cases a fair hearing. To deprive a party of the right to defend itself is perhaps the tribunal's most serious power, which I decline to exercise unless convinced that it is the right course. In this case it would not be right or in the interests of justice to do so.

Costs

22. Mr Chukwudolue applied for costs. Although expressed diffusely, his application was that this hearing, and delay, were not the fault of the claimant, and he should not have been put to cost as a result. He claimed £1,500.00. His claim was unsupported by either a copy of his firm's terms of client engagement, or an itemised bill of costs or time breakdown.

23. The tribunal can only award costs if the paying party has been shown to have conducted the case unreasonably. The difficulty with the application was that it was predicated on the point which could not be proved, ie that this sequence was the respondent's fault and therefore the product of unreasonable conduct. That has not been shown in this case, and the application is refused.

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Employment Judge R Lewis

Date: 8/12/2021

Sent to the parties on: 30/12/2021

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For the Tribunal Office