



THE EMPLOYMENT TRIBUNALS

Claimant: Miss N Whitfield
Respondent: Second to None Care Limited
Heard at: Newcastle upon Tyne Hearing Centre
On: Friday 21st January 2022
Before: Employment Judge Johnson

Representation:

Claimant: In Person
Respondent: Mr N Fuller (Employment Consultant)

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The respondent's application for reconsideration of the default judgment promulgated on 21st October 2021 is refused. It is not in the interests of justice for there to be a reconsideration. The judgment promulgated on 21st October 2021 is confirmed.

REASONS

1. This matter came before me this afternoon by way of a telephone hearing to consider the following matters:-
 - (i) the respondent's application for a reconsideration of the default judgment promulgated in favour of the claimant on 21st October 2021;
 - (ii) the respondent's application for an extension of time in which to present its response form ET3;
 - (iii) if appropriate, to consider and make such case management orders as may be required.

2. The claimant attended the hearing in person and the respondent was represented by its employment consultant, Mr Fuller. Mr Fuller had helpfully prepared a bundle for the hearing which contained the following documents:-
 - (i) ACAS early conciliation certificate;
 - (ii) claim form ET1;
 - (iii) judgment;
 - (iv) application to set aside;
 - (v) ET3;
 - (vi) notice of hearing.

3. At the commencement of the hearing, I set out the following chronology which is apparent from the employment tribunal file and the dates of which were all accepted by Miss Whitfield and Mr Fuller:-
 - (i) the claimant's employment with the respondent began on 21st June 2021;
 - (ii) that employment ended on 30th July 2021;
 - (iii) the claimant commenced ACAS early conciliation on 13th August 2021;
 - (iv) the claimant obtained her ACAS early conciliation certificate on 9th September 2021;
 - (v) the claimant presented her claim form ET1 to the employment tribunal on 9th September 2021;
 - (vi) that claim form would have been served by ordinary post by 11th September 2021;
 - (vii) the response form ET3 was to be served by not later than 12th October 2021;
 - (viii) in accordance with the tribunal's request, the claimant provided a Schedule of Loss on 18th October 2021;
 - (ix) Employment Judge Martin signed the Rule 21 default judgment on 19th October 2021;
 - (x) the default judgment was promulgated on 21st October 2021;
 - (xi) the respondent's application to set aside that judgment was made on 22nd October 2021.

4. In her claim form, the claimant alleged that the respondent had made an unauthorised deduction from her wages. In her Schedule of Loss submitted on 18th October, the claimant confirmed that the amount deducted from her wages before tax and national insurance was deducted was £890.18. Based upon that information, the employment judge was satisfied that a Rule 21 default judgment should be issued.
5. The application to set aside judgment and for an extension of time to present the response was lodged on 22nd October. A summary of the grounds of the application is as follows:-
 - (i) whilst the claim form was undoubtedly received by the respondent, at that time the respondent's manager was absent from work due to illness;
 - (ii) there was an "office move" within the respondent's business around 23rd September 2021;
 - (iii) the respondent's manager's returned to the office on 19th October, when the claim form was discovered;
 - (iv) the delay in presenting the response is a matter of only 10 days;
 - (v) there is substantial prejudice to the respondent, because it was entitled to deduct the sums claimed from the claimant's wages under the terms of her contract of employment, principally because she failed to provide a week's notice before resigning.
 - (vi) accordingly, it is in the interests of justice for the judgment to be set aside.
6. The procedure for the consideration of judgment is contained in Rules 70 – 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. It is accepted that the respondent's application is made in accordance with those rules, mainly because it was presented within 14 days of the promulgation of the judgment. It contains an explanation for the delay and it contains an application for an extension of time.
7. The only ground for making an application for a reconsideration is on the grounds that "it is in the interests of justice" for the judgment to be set aside.
8. I today raised with Mr Fuller the following matters and invited him to provide an explanation:-

Apart from the written application dated 22nd October 2021, there is no evidence put forward by the respondent to support the grounds of its application. In particular:-

 - (i) there is no witness statement from the manager who was allegedly absent due to illness and who would ordinarily have dealt with the post, including the employment tribunal paperwork;

- (ii) there is nothing by way of evidence or fit notes to confirm that this person was absent from work due to illness;
 - (iii) there is no copy of the contract allegedly signed by the claimant, by which she agreed to any deductions being made;
 - (iv) there are no invoices, timesheets or breakdowns in respect of the sums allegedly paid for someone to carry out the work the claimant would and should have carried out, had she given one week's notice of resignation.
9. In my judgment, the respondent has had 3 opportunities to substantiate its position both with regard to its response generally and its application to set aside the judgment. The first of course was when it had the opportunity to present its response within 28 days of receiving the claim form. The second was when the application to set aside the judgment was made on 22nd October 2021. The third was in the period of time between the respondent receiving notice of today's hearing (sent on 30th November 2021) and the date of today's hearing. The respondent has been able to put together a bundle, but has failed to include in that bundle anything which the employment tribunal had not already seen.
10. I asked Mr Fuller to explain how a payment of £890.14 would cause "substantial prejudice" to the respondent in all the circumstances. Mr Fuller's response was simply that the respondent is not satisfied that the claimant had done the work for which she now claimed payment and that the respondent genuinely believed that it was entitled to withhold the sum claimed under the terms of the contract. No evidence was given as to the size or administrative resources of the respondent's organisation, nor its turnover, profit etc and what impact it would have on the respondent that would be "substantial" by having to pay the claimant's wages of £890.14.
11. In all the circumstances I am not satisfied that it is in the interests of justice for this judgment to be set aside. The application to set aside the judgment is refused, as is the application for an extension of time in which to present the response. The judgment promulgated on 21st October 2021, by which the respondent was ordered to pay to the claimant £890.14, is confirmed.

EMPLOYMENT JUDGE JOHNSON

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
1 February 2022**

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