



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4107711/2020

Employment Judge S MacLean

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Mr C McKechnie

Claimant

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GS Plumbing Heating and Gas Limited

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that (1) the application under rule 20 of
25 Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure)
Regulations 2013 is refused; (2) the application under rule 71 of Schedule 1 to the
Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is
refused; and (3) the Judgment dated 26 January 2021 and sent to the parties on 1
February 2021 is confirmed.

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REASONS

Introduction

1. On 1 February 2021 under rule 21 of Schedule 1 to the Employment Tribunals
(Constitution and Rules of Procedure) Regulations 2013 (the Tribunal Rules) I
issued a judgment in favour of the claimant as follows (the Judgment):

E.T. Z4 (WR)

“No response has been presented to this claim and an Employment Judge has decided to issue the following judgment on the available material under rule 21:

- 5 1. The respondent has made an unauthorised deduction from the claimant’s wages and is ordered to pay the claimant the sum of £486 in respect of unpaid wages for the weeks commencing 31 August 2020 and 7 September 2020.
- 10 2. The respondent has failed to pay the claimant’s holiday entitlement and is ordered to pay the claimant the sum of £892.80 being 18 days untaken accrued annual leave.
3. The hearing listed on 16 February 2021 is cancelled.”
- 15 2. On 2 February 2021 Tag Singh, the Managing Director of the respondent sent an email to the Tribunal stating that he had been in contact with the Tribunal office in the week commencing 4 January 2021 and was informed that the Tribunal would contact the respondent before the “scheduled tribunal”. He said that it was unfair for the Tribunal to make a decision before the respondent had a chance to put forward its case. He “appealed” the Judgment and asked for the “original date to be reinstated”.
- 20 3. On 3 February 2021 I considered the case papers and directed the Tribunal to advise the respondent that the application for reconsideration was rejected as the respondent did not set out why the Judgment required to be reconsidered given that no ET3 response had been presented; and the application was not copied to the claimant.
- 25 4. In the meantime on 4 February 2021 the respondent sent the Tribunal a copy of an undated, unsigned letter that was addressed to the claimant. This letter referred to the respondent making a claim against the claimant for training costs.
- 30 5. The Tribunal sent an email to the respondent on 16 February 2021 reminding the respondent that the application for reconsideration was rejected; no ET3 response had been presented and referring the respondent to rule 20 of the

Tribunals Rules. The respondent sent a reply by email later that day in which it referred to office staff working from home and not always having access to mail “right away”. The email was referred to Employment Judge Robison who again directed on 23 February 2021 that the respondent be referred to rule 20 of the Tribunal Rules.

- 5 6. The respondent sent a further email on 24 February 2021 at 14:07 referring to the telephone call in January 2021 with the Tribunal when the respondent says that it was told not to do anything as the Tribunal would be in touch nearer the original tribunal date.
- 10 7. An ET3 response was attached to an email sent on 26 February 2021. I indicated that I would treat the draft ET3 response and the respondent’s emails as an application under rule 20 for an extension of time to submit the response.
- 15 8. The Tribunal wrote to the respondent asking for confirmation if the respondent wished a hearing or for the application under rule 20 to be considered on the information before me. The respondent replied by email sent on 13 May 2021 that it wanted “a fair hearing and to put this matter to a close”. The claimant opposed the application.
9. A notice of hearing was issued on 9 August 2021 for an in person hearing on 8 October 2021 to reconsider the Judgment.

20 **The Hearing on 8 October 2021**

10. On 8 October 2021 the claimant and his representative Ms Bowman attended the hearing. There was no appearance by or for the respondent. I was informed that the respondent’s representative Mr Singh was ill but the nature and extent of that illness was not explained.
- 25 11. In the circumstances I postponed the hearing and issued an order that included a direction that the respondent to provide further information by 20 October 2021.

Subsequent Correspondence

12. On 15 October 2021 the Tribunal received an email from the respondent advising that Mr Singh had taken time off work as his family had suffered five deaths in six months. Once he returned to work the respondent would have him reply to the order. This email was not copied to the claimant.
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13. On 26 October 2021 the Tribunal sent an email to the respondent directing that the respondent should comply with parts 2(b) to 2(d) of the order by 2pm on 29 October 2021. This and the respondent's email of 15 October 2021 was copied to the claimant.
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14. The claimant's representative replied on 28 October 2021, copying the respondent stating that the respondent had not indicated why only Mr Singh can comply with the orders and the respondent has had ample time to instruct a legal representative and had not done so. The claimant contended that it would go against the overriding objective to allow the reconsideration process to continue.
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15. There has been no further communication from the respondent.

Deliberation

16. I considered that there was some merit in the claimant's submission that the respondent was not actively resisting this claim but rather acting unreasonably in its conduct of the proceedings by failing to properly engage in the process. The respondent has been given ample opportunity to reply to the orders but has failed to do so or provide any explanation. I therefore decided to consider matters based on the information before me.
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17. As mentioned in the introduction an ET3 response was sent on 23 February 2021. I treated that and the earlier correspondence as an application under rule 20 of Tribunal Rules for an extension of time to present the response.
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18. Having regard to all relevant factors in accordance with the case of *Kwik Save Stores Ltd v Swain 1997 ICR 49* and to the overriding objective, I have considered the respondent's position as set out in some detail above and have

also taken into account the claimant's objections. Given the lack of detail presented in the ET3 response, it is not clear that the defence presented has merit. The respondent has had ample time to set out the merits of its defence and has failed to do so. There was a hearing. While Mr Singh was not available that day there was no other representation for the respondent and there has been no attempt to comply with the orders issued afterwards or to engage in correspondence. Allowing further delay would result in greater prejudice to the claimant as it is not immediately clear that the respondent is actively pursuing their application.

19. In the circumstances, the application under rule 20 is refused.
20. Having reached that decision, I considered whether it was appropriate for me to consider the application for reconsideration. As indicated in the introduction I had previously rejected the application to reconsider the Judgment on 3 February 2021 as the respondent had not set out why the Judgment required to be reconsidered given that no ET3 response had been presented; and the application was not copied to the claimant.
21. I noted that the respondent referred to a telephone call with the "Tribunal office" that the Tribunal would contact the respondent before the "scheduled tribunal". There was no reference to whom the respondent spoke. I speculated that this might have been reference to a test to be carried out by administration before the remote hearing scheduled for 16 February 2021 to ensure that everyone had the necessary equipment and internet connection to take part in the hearing. I considered it unlikely that the respondent would have been told by an administrative colleague that it was "not to do anything" about defending the claim. The respondent had obviously received the letter of 14 December 2020 enclosing the ET1 claim form and prescribed ET3 response form for completion by 11 January 2021. The letter also confirmed that if the response was not received by then, and no extension had been applied for or given the claim would proceed undefended. The letter contained directions relating to the hearing about witnesses and productions. No ET3 response was sent by 11 January 2021.

22. While I was informed on 16 February 2021 that the correspondence was not received until “earlier this year” as office staff have been working from home, it must have been received by the week commencing 4 January 2021 when the respondent says it telephoned the Tribunal office.

5 23. The Judgment has been in place since 1 February 2021. I invited the respondent to allow the matter to be considered without a hearing. The respondent requested one. While I appreciate that Mr Singh is the Managing Director and he has had family bereavements, the respondent is a limited company. There has been reference to office staff who I assume received the letter sent on 14 December 2020. All the other communication has been to and from the respondent’s generic email address. There has been no explanation why only Mr Singh can deal with this matter.

10 24. The respondent failed to send the ET3 response in time. The ET3 response that was provided on 23 February 2021 does not appear to disclose a defence but rather seeks to bring a claim against the claimant for training costs. The ET1 claim form does not include a claim for breach of contract. Accordingly the Tribunal has no jurisdiction to hear an employer contract claim.

15 25. The respondent failed to attend the hearing that it requested; failed to comply with times limits for orders that were extended; and has failed to engage in correspondence with the Tribunal and the claimant’s representative.

20 26. While a proposed ET3 response was subsequently submitted I consider that on the information available there is not reasonable prospect of the Judgment being varied or revoked. I am of the view that Judgment should be confirmed.

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Employment Judge: S Maclean
Date of Judgment: 15 March 2022
Entered in register: 16 March 2022
30 **and copied to parties**