



EMPLOYMENT TRIBUNALS

Claimant

Mr S W Eaton

v

Respondent

William Diggins

Heard at: Huntingdon

On: 14 April 2022

Before: Employment Judge Ord (by CVP)

Appearances

For the Claimant: In person

For the Respondent: In person

JUDGMENT on RECONSIDERATION

The Respondent's Application for Reconsideration of the Judgment dated 12 November 2021 is refused.

REASONS

1. On 12 November 2021 Judgment was given in favour of the Claimant in this case in the absence of the Respondent. The Respondent then sent to the Tribunal, on 6 December 2021, the same day as the Judgment was sent out by email, a form EAT1 Notice of Appeal which I treated as an Application for Reconsideration.
2. The form was accompanied by two documents: an email with what is said to be a copy of notification from the NHS of a positive Covid test dated 2 November 2021 and a further email from the Respondent.
3. In those documents and the EAT1 form, the Respondent says: firstly, that he had no notice of the Hearing on 12 November 2021 and secondly, that he had no correspondence from the Tribunal after submitting his Response on 5 October 2020 until he received the Judgment on 6 December that year.
4. However, the Respondent also says that he was contacted by a third party on 30 October offering to represent him at a Hearing on 12 November

2021, after which he searched his emails and found the communications from the Tribunal. The Respondent says he then called the Employment Tribunal and was told the file was at Cambridge Employment Tribunal and was that the member of the Administration could not see that the Respondent had been contacted.

5. That was clearly incorrect because the Respondent accepts that he had been contacted and that by the time he telephoned the Tribunal, he was aware of the Hearing and aware of the documents that had been sent.
6. As I am satisfied that the Respondent, indeed the Respondent admits, that he had notice of the Hearing itself, I have to be satisfied that there was a good reason for his failure to attend. I have considered the authorities of Morris v Griffiths [1977] ICR153 and Lewes Associates v Little UKEAT/0460/08.
7. The Respondent has submitted what is said to be a copy of a text indicating that he had a positive Covid test on 2 November 2021. He said in his EAT1 form that this resulted,

“in a period of hospitalisation and I was in isolation on 12 November 2021 when the Hearing took place, the Hearing I was never informed of”.
8. However, the Respondent has already accepted that he was informed of the Hearing.
9. The Respondent has told me that he was in hospital from 6 - 9 November 2021. The reason for that hospital admission and illness was not Covid related. The Respondent has told me that it was a gastro problem. He was certainly fit enough to be sent home on 9 November 2021. The Respondent has not provided any documents in support of his illness and hospitalisation. He was well enough to be discharged home on 9 November 2021 and even if 12 November 2021 was the last day of his self-isolation as a result of a positive Covid test, the Hearing was to be conducted by Cloud Video Platform (CVP) and the Claimant could, as he has done today, have joined the Hearing and explained the position. He chose not to.
10. In the circumstances of this case, I am not satisfied that the Respondent has given the matter the sufficient degree of importance that it warranted. He was aware of the Hearing on 12 November 2021 and even had an offer of representation at it. He did not attend, did not make any effort to have anyone else attend on his behalf and sent no email to the tribunal. He made no attempt to contact the tribunal beyond the alleged telephone call on 30 October 2021.
11. I am not satisfied that the Respondent could not attend the hearing on 12 November. I have nothing more than the Respondent’s own reportage of

any medical reason why the Respondent could not attend the Hearing. There would be hospital notes regarding his admission and possibly a discharge letter. He has not produced any confirmation of any prescription, or other record of drugs or treatment provided to him.

12. I have to be satisfied on the evidence before me that the Respondent had a good reason for non-attendance and I am not.
13. The Respondent's evidence regarding receipt or non-receipt of the Tribunal documents is inconsistent and that does not assist me in establishing the veracity of the other things which he tells me. He says that whilst he had the documents from the Tribunal, he was not aware that it was a Hearing. I pointed out to him that the document in question sent by the Tribunal on 22 November 2020 is headed,

"Notice of Hearing by Cloud Video Platform"

and it advised him,

"the claim will be heard by an Employment Tribunal on Friday 12 November 2021 at 10am..."

14. It cannot be said that those documents could be any clearer about the course of events that were to follow.
15. In all the circumstances, therefore, I am not satisfied that the Respondent had a good reason for failure to attend the Hearing on 12 November 2021.
16. The purpose of reconsideration is not to allow a party who has failed to take appropriate steps to be ready for and to attend the Hearing to have another opportunity, or a second bite of the cherry. That is not in the interests of justice and as that is the sole ground on which a reconsideration can be allowed, I am not satisfied that it should be allowed in this case.
17. Accordingly, the Application for Reconsideration is refused and the Judgment dated 12 November 2021, sent to the parties on 6 December 2021 stands.

19 April 2022

Employment Judge Ord

Sent to the parties on: 28/4/2022

For the Tribunal Office – N Gotecha