



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Miss L Campbell

AND

Respondent
Clearbox Premises Ltd

JUDGMENT ON A RECONSIDERATION APPLICATION BY SKYPE

Heard at: Birmingham (by Skype) **On:** 16 June 2020

Before: Employment Judge Hughes

Representation

Claimant: Mr McConville, Lay Representative, with the claimant in attendance

Respondent: Mr J Taylor, Director

EMPLOYMENT JUDGE Hughes

JUDGMENT

The respondent's application for a reconsideration is refused. The default judgment made on 16 April 2020 is confirmed.

REASONS

1 References in square brackets in this judgment are to pages in the hearing bundle, C1.

2 On 23 November 2019, the claimant presented a claim for unauthorised deductions from wages [9-20]. The Early Conciliation requirements had been complied with [8]. The claim was in time.

3 The claim was served on the respondent at the address on the Claim Form and Early Conciliation Certificate which was at that point the address of the respondent's Registered Office. A standard order for case management was made.

4 The respondent did not submit a response in time. A default judgment for an unauthorised deduction from wages of £844.14 was made by me on 16 April 2020 and sent to the parties on that date [23].

5 On 28 April 2020 the respondent submitted a request to set aside the default judgment. This stated: “We were genuinely confused when we read the case management order and we received nothing from the claimant as per instruction from the Tribunal. As such we did not receive any further communications regarding this case. As such we ask the Tribunal to allow this to be reconsidered” [24]. At the same time the respondent submitted a Response Form defending the claims [25-31] with attachments [32-37].

6 I caused a letter to be sent to the claimant’s representative for comments. The claimant objected to the application pointing out that no response had been received and that: “To say you have seen the case management order and were confused is not a defence”.

7 I decided it was in the interests of justice to have a hearing to reconsider whether to confirm, revoke or vary the default judgment (Rule 70 of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 “the Rules”). In the event that the judgment was revoked, this was to be immediately followed by a hearing to determine the merits of the claim.

8 The hearing was conducted by Skype because of the Covid-19 situation. I asked the respondent to explain the basis of his application. He relied on the letter dated 28 April 2020 [24].

9 I explained that the issue was why the Response Form was not submitted in time. Mr Taylor said this was because the address was incorrect as the respondent had not been at that address from approximately 7 November 2020 and had emailed the Employment Tribunal regarding the change of address on that date. I queried how that could be given that the Claim Form was not received until 23 November 2019. He replied that the email had been sent in respect of another case and so there had been maladministration by the Tribunal’s administrative staff. I explained that this was not correct. Mr McConville pointed out that the wording of the respondent’s application suggested that the case management order had been received. I asked my clerk to check if there was any returned post on file and she said there was not. Mr Taylor then said that this was because the pub the respondent had been running (“The Bear”) had been taken over by Admiral Taverns and they would not pass post on. I asked if he had evidence of this and he said that he did, but not to hand.

10 Mr Taylor then said that he was unaware of the proceedings until receiving the default judgment. I queried how he had received the default judgment because it had been sent to the same address. Mr Taylor said that his company has a £15

per month subscription to Experian (a credit checking agency) which automatically updates if there are judgments against the company and that this alerted him to the default judgment, which caused him to contact the Tribunal and request copies of the papers. These were sent and included the case management order.

11 Mr McConville said that this could not be correct because Experian would credit check County Court judgments, not Employment Tribunal default judgments, unless enforcement action has been taken. I thought that point had merit, so I asked Mr Taylor if he could prove the respondent's membership of Experian and that the membership would flag up default judgments made by the Employment Tribunal. Mr Taylor said he could do so but did not have any paperwork with him.

12 In the circumstances, I concluded that there were no grounds to revoke or vary the judgment because I could not be satisfied that the respondent had not received the Claim Form. I said that if the respondent could provide proof to the Tribunal and the claimant's representative by **30 June 2020** of: change of address in or around 7 November 2020; Experian membership; and that the membership would cause Employment Tribunal default judgments to be flagged up; I would seek comments from the claimant and then conduct a further reconsideration on the papers. I explained that the judgment is confirmed and that if no proof is received **by 30 June 2020** that this will remain the case.

13 Mr Taylor objected, saying that the notice of hearing said the judgment would be reconsidered. I explained that it had been and referred him to Rule 70 of the Rules. Mr Taylor said that he wanted this case to be dealt with by a different judge because I was biased. I do not accept that I have shown actual bias or the appearance of bias – the respondent's application has failed because of lack of evidence. I therefore intend to continue dealing with this case. Mr Taylor then said he would complain about me to the Regional Employment Judge. I told him he was welcome to do so.

15 When preparing these reasons I noted that the Respondent's Registered Office address changed from that on the Claim Form to 1 Carder Avenue, Stafford, St16 1QU on **11 May 2020** and that the respondent is voluntarily seeking to be struck off the Companies House register. **These are points which the respondent should also address when submitting further evidence by 30 June 2020.**

Signed by Employment Judge Hughes on 18 June 2020