



# EMPLOYMENT TRIBUNALS

**Claimant:** Kerry Newman

**Respondents:** Ashley Boxall and Joanne Boxall T/A Sunkist & Herons Mead

## Record of a Preliminary Hearing heard by CVP at the Employment Tribunal

**Heard at:** Nottingham                      **On:** 7 April 2022

**Before:** Employment Judge Hutchinson (sitting alone)

### Representation

**Claimant:** In person

**Respondent:** Sam Sleight, Chartered Legal Executive

# JUDGMENT

The Employment Judge gave Judgment as follows.

1. The Judgment dated 12 January 2022 and sent to the parties on 19 January 2022 is hereby revoked.

# REASONS

1. The Claimant presented her claim to the Tribunal on 25 August 2021. She said that she had been employed by the Respondents as a Receptionist and Sales Assistant from 25 March 2018 until 30 June 2021 when she was dismissed without notice.

2. Her claims were;
  - Unfair dismissal.
  - Breach of contract.
  - Failure to pay minimum wage.
3. The claim was accepted and served on the Respondents on 27 August 2021. The Respondents were told that if they wanted to defend the claim, they must complete the response form and submit it to the Employment Tribunal by 24 September 2021. They were told that if not a Judgment may be issued against them.
4. The case was listed for hearing on 12 January 2022 at Lincoln Magistrates Court and Case Management Orders were made.
5. On 29 September 2021 the Respondents filed a response to the claim. They said that they intended to defend the proceedings and set out in their response the basis of their defence. Attached to their response was a compliment slip which said that they had been waiting to settle the claim and that they had only just received notice that they had not been able to do so.
6. That response had been received more than 28 days after the Respondents had been sent a copy of the claim and on the 18 October 2021 the Tribunal wrote to the Respondents informing them of the rejection. Notes were attached to that notification explaining to the Respondents what they needed to do. The Respondents were informed that the reason for the rejection was that it had not been accompanied by an application to extend time.
7. The Respondents did not respond to this and on 26 October 2021 my colleague Employment Judge Clark issued a Default Judgment and ordered that the hearing on 12 January 2022 would proceed as a Remedy Hearing. This Judgment was only sent to the parties on 9 December 2021.
8. On 20 December 2021 the Respondents wrote again to the Tribunal asking the Tribunal to reconsider its case against them and explaining that they had been in touch with ACAS and tried to settle the claim. They said that they had not been told they had to respond to the Tribunal as well as forwarding a settlement to the Claimant via ACAS. They had not been aware that they also needed to file a response.
9. They again denied the claims made by the Claimant and set out why they had dismissed the Claimant and why they felt they had not underpaid her during her employment with them.
10. That letter was referred to my colleague Employment Judge Heap. She said that the letter was to be taken as an application from the Respondents seeking a retrospective extension of time to enter an ET3 response in respect of the claim.
11. Employment Judge Heap rejected that application on the basis that the application

had not specified in detail the reason why the extension was sought and said that it should be accompanied by a draft of the ET3 response.

12. The Respondents were informed that they could resubmit an application which was compliant, and they must send a copy of that application to the Claimant. They had not done so in this application.
13. They were told that if such an application was made it would be considered at the outset of the hearing on 12 January.

### **The hearing of the 12 January**

14. I conducted the hearing on that date. The Claimant appeared in person and Joanne Boxall also attended the hearing which was conducted by CVP. At the hearing the Respondent had not filed an ET3 that had been accepted and therefore could not participate in the hearing. I heard evidence from the Claimant and gave Judgment as follows;

- 14.1. I amended the name of the Respondent to Ashley Boxall and Joanne Boxall T/A Sunkist & Herons Mead.
- 14.2. I ordered the Respondent to pay to the Claimant the sum of £9898.00 in respect of wages.
- 14.3. I ordered the Respondent to pay to the Claimant notice pay of £1083.72.
- 14.4. I ordered the Respondent to pay compensation to the Claimant for unfair dismissal in the sums of;
  - Basic Award £1924.56.
  - Compensatory Award £11846.42.
- 14.5. I declared that the Respondents had not provided the Claimant with a written statement of terms and conditions of employment and ordered them to pay compensation to her in the sum of £1710.72.
- 14.6. The total amount of compensation payable was £26463.42.
- 14.7. I signed the Judgment on 19 January 2022, and it was sent to the parties on the 21 January 2021.
- 14.8. I explained to Mrs Boxall at that hearing that she could apply for a reconsideration of the Judgment and this was also explained to her in the letter of 21 January 2022 which accompanied the Judgment.

### **Application for Reconsideration**

15. After this hearing the Respondents consulted with Mr Sleight of Hodgkinsons Solicitors and he made an application for reconsideration on 4 February 2022.

16. That letter explained that the Respondents had only instructed Solicitors on or around 2 February 2022.
17. The letter from Mr Sleight explained the reasons for the failure to file an ET3. It said that Mrs Boxall had engaged in the ACAS early conciliation but had failed to understand the role of ACAS and its limitations. This had resulted in a delay in them presenting their ET3.
18. An ET3 was presented albeit 8 days late. He pointed out that the Respondents had not ignored the claim but had failed to adhere to the formalities of lodging the ET3 which led to Default Judgment being entered.
19. He submitted that these errors had led to the Respondents being unable to defend the claim of well over £20000 which was a highly material sum for a small business such as that run by the Respondents.
20. He went on to explain that Mrs Boxall had attended the hearing on 12 January 2022 and had been prepared to argue her case that she had been told that she was unable to do so by myself. That is correct. The reason for that was that the Claimant had not presented an ET3, and I did not have any power to hear her defence of the claim.
21. He said that the Respondent once they had received the Judgment had acted swiftly in instructing Solicitors and seeking to remedy the matter.
22. Mr Sleight set out that he believed that the Respondents did have a full defence to all the claims, and they had not had an opportunity to defend the case.
23. Apart from their defence on liability he said the Respondents were also entitled to be heard on the issue of quantum. There was a sizable award for non-payment of wages in respect of the minimum wage claim and the Respondents dispute the amount of that claim. That has also affected the amount of the award for unfair dismissal.
24. That application was referred to me and on 10 February 2022 I ordered that the Respondent should file a draft ET3 and comply with Rule 20 and that the application would be held in abeyance pending that application.
25. On 24 February 2022 the Respondents Solicitors filed a draft ET3 together with an application for an extension of time to present the response which was compliant with Rule 20 of the Employment Tribunal Rules of Procedure.
26. Having considered that application and the representations by the Claimant I decided that I would hear the application for reconsideration and listed the matter for hearing today.

**The hearing today**

27. I heard from Mr Sleight and Mrs Newman and there was an agreed bundle of documents produced by the Respondent in support of their application.

**The Law**

28. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides me with the general power to reconsider any Judgment where it is necessary in the Interest of Justice to do so.

29. On reconsideration the original decision maybe confirmed varied or revoked and if it is revoked it may be taken again.

30. Rule 70 provides me with a wide discretion, but that discretion must be carefully applied by me.

31. I should take into account the general principle that there should be finality of litigation but against that I should consider whether that has been outweighed by the potential injustice to the Respondent. I need to look at matters from both sides.

**My Conclusion**

32. In this case I am satisfied that I should exercise my discretion and revoke the Judgment for the following reasons;

32.1. The Respondent were unrepresented in these proceedings until after the Judgment was given by me. I am satisfied that they genuinely did not understand what was required for them to defend these proceedings.

32.2. They had tried to engage in the proceedings. This is not a case of Respondents ignoring the proceedings. They first tried to present a response to this claim on 29 September 2021. At that stage the response was only 8 days late and if it had been accompanied by an application to extend time and an explanation of why they had not submitted their response earlier I have no doubt that they would have been granted an extension of time and the response accepted.

32.3. I am satisfied that they did not understand the correspondence from the Tribunal on 18 October 2021 informing them of the position and that they tried to file an explanation again on 20 December 2021 and they again set out their defence to the claims.

32.4. The fact that the Respondent also attended at the hearing on 12 January 2022 again shows that they did wish to engage in the procedure but simply did not understand how to do so.

- 32.5. I take into account that this is a small business and the Respondent clearly did not understand what they were doing. They should have obtained legal advice at a much earlier stage, but they didn't.
- 32.6. This all resulted in a substantial Judgment being entered against them well in excess of £26000. That is a substantial sum of money for this small business.
- 32.7. Based on what they said in the ET3 the Respondents do have a case to argue in respect of liability and quantum. I particularly note that I gave a Judgment for a failure to provide a written statement of terms and conditions of employment and in the bundle, there is a signed statement of terms and conditions of employment.
- 32.8. I am satisfied in this case that I should revoke that Judgment together with the default Judgment that was previously made, and the matter should proceed now to a hearing.

### **Listing a Hearing**

33. The claims will now be heard by an Employment Judge sitting alone by **CVP on 10 August 2022 at 10.00am**. Details of how to join the hearing will be provided at a later date. The parties are to join the hearing by 9.30am to deal with any connectivity issues prior to the hearing commencing promptly at 10.00am. 1 day has been allocated to hear the evidence and to determine the claims. If that date is inconvenient for any reason the parties must inform the tribunal within 7 days of receiving this notification.
34. The claims are;
- Unfair dismissal.
  - Notice pay.
  - Wages (non-payment of minimum wage).
  - Failure to provide a written statement of terms and conditions of employment.

## **ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

1. By the **10 May 2022** the Claimant and the Respondent must send each other a list of all documents they have relevant to the issues in the case. This includes documents relevant to financial losses.
2. If the Claimant or Respondent want copies of any of the documents, they must ask for them. Copies must be sent to them.
3. Documents including recordings, emails, text messages, social media and other

electronic information. The parties must list all relevant documents they have in their possession or control even if they do not support their case.

4. By **24 May 2022** the parties must agree which documents are going to be used at the hearing and the Respondent must prepare a file of those documents with an index and page numbers and send a hard copy to the Claimant.
5. The file should contain;
  - 5.1. The claim and response forms, any changes or additions to them and any relevant Tribunal orders in front of the file.
  - 5.2. Other documents or parts of documents that are going to be used at the hearing in date order.
  - 5.3. The Claimant and the Respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing including the Claimant needs a witness statement.
  - 5.4. A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.
  - 5.5. Witness statements should be typed if possible. They must have paragraphed numbers and page numbers. They must set out the defence usually in the order they happened. They must also include any evidence about financial losses and any other remedy the Claimant is asking for. If a witness statement refers to a document in the file it should give the page number. At the hearing the Tribunal will read the witness statements. Witnesses maybe asked questions in their statements by the other side and the Tribunal.
  - 5.6. The Claimant and the Respondent will send each other copies of all their witness statements **by 21 June 2022**.
  - 5.7. The Respondent must provide 3 days before the hearing one hard copy and an electronic copy of all the witness statements and the bundle of documents.
  - 5.8. The parties must have their own copies of the documents and witness statements for the Tribunal hearing.

---

Employment Judge Hutchinson

Date: 26 April 2022

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.