



EMPLOYMENT TRIBUNALS

Claimant: Mr T Shead

Respondent: Abellio London Limited

JUDGMENT

Rule 70 the Employment Tribunal Rules of Procedure 2013

The Judgment dated 17 December 2021 has been reconsidered on the application of the respondent and revoked.

REASONS

1. Background: The claimant submitted his claim form on 26 May 2021 which was sent by post by the Tribunal to the respondent at its registered office on 16 June 2021. They were notified that their response was due by 14 July 2021. No response was filed and a Judgment pursuant to rule 21 of the Employment Tribunal Rules 2013 was issued dated 17 December 2021. On 21 December 2021a notice of remedy hearing was sent to the parties.
2. On 6 January 2022 solicitors acting for the respondent applied for a reconsideration of the Judgment. In summary the grounds for their application were:
 - a. the respondent had not received a copy of the claim form from the Tribunal or the claimant and had had no ACAS communication in advance of the claim being bought;
 - b. their first knowledge of the claim was receipt of the Judgment on 4 January 2022;
 - c. they described their systems, adapted as a result of the pandemic, for receiving and distributing post;
 - d. in all the circumstances it would be in the interest of justice to set the judgement aside and allow the respondent the opportunity to review and respond to the claim. They consider they have a defence to the allegations and would be severely prejudiced if not given permission to take part in the proceedings.
3. On 13 January 2022 Ms Emerson, representing the claimant, wrote to the Tribunal commenting on the respondent's application. In summary, those comments were:

- a. it was not true that ACAS had not contacted the respondent. In fact they have done so on more than one occasion and had spoken to the respondent by telephone
 - b. it was clear that the respondent had regularly been receiving post in the relevant period;
 - c. the claimant would be severely prejudiced if a reconsideration was allowed based on false claims regarding contact between the respondent and ACAS.
4. On 20 January 2022 Ms Emerson contacted the Tribunal again and attached evidence of contact between ACAS and the respondent. Those attachments did indicate that ACAS had made contact with the respondent on more than one occasion.
 5. Later on 20 January 2022 the respondent confirmed, having conducted further investigations, that there had been an exchange of three emails between ACAS and the respondent's employee relations manager in April 2021 but that that manager had since left the business and therefore when the application for reconsideration was made that information was not known by the respondent. In any event, they said, the respondent having been in contact with ACAS did not affect their principal position which was that they had not received a copy of the claim form.
 6. Ms Emerson replied with detailed comments on that response on 24 January 2022. She pointed out that in addition to emails there had also been a telephone call between ACAS and the respondent and that this indicated a failure by the respondent to thoroughly investigate the position. She also said that the relevant manager had not left the respondent until late December 2021. She submitted that these matters brought into question the respondent's statement that they had not received the claim form at the relevant time. Ms Emerson also referred to the relative size and resources of the claimant and the respondent and set out a detailed timeline which, she said, showed a pattern of delaying responses and missing deadlines by the respondent.
 7. The parties were notified on 16 February 2022 that I would consider the reconsideration application on the papers unless either party objected within seven days. No such objection was received.
 8. Decision: it is appropriate to revoke a Judgment when it is in the interests of justice to do so. On these facts it is in the interests of justice to give the respondent an opportunity to defend the claim brought against them.
 9. I agree with Ms Emerson that the respondent failed to investigate thoroughly the position regarding its contact or otherwise with ACAS prior to making their application. It must also be the case that the arrangements they have (or had) in place at the time at their registered office to monitor post were insufficient (it being most unlikely that the claim form was simply not delivered at all by Royal Mail).

10. However, having assessed the balance of prejudice between the parties, I conclude that it falls in favour of allowing the respondent to present their defence to this claim.
11. A copy of the claim form shall be sent to the solicitors on record for the respondent. Time for filing a response is extended to 28 days after the date of that letter.

Employment Judge Andrews
Date: 4 March 2022