



EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

“This has been a remote hearing not objected to by the parties. The form of remote hearing was V – by video or CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”

Claimant

Respondent

Mr A Khiari

v

CTR Construction Ltd

Heard at: Watford [in public; remotely by CVP]

Before: Employment Judge George

Appearances:

For the claimant: in person

For the respondent: Mr A Woollcott, director

DECISION ON A RECONSIDERATION APPLICATION

1. The claimant's application for a reconsideration of the judgment of Employment Judge Reed sent to the parties on 24 June 2021 is dismissed.

REASONS

1. Following a period of conciliation which took place between 28 November 2019 and 5 December 2019, the claimant presented a claim on 15 December 2019 by which he complained of discrimination on grounds of race and grounds of religion or belief and also that he was owed money for work done for which he had not been paid. The respondent, a recruitment agency working in the construction sector, defended the claim by an ET3 which was presented on 15 January 2020.
2. The claims were case managed by Employment Judge Bedeau at a hearing on 5 February 2021 when the claimant withdrew his discrimination complaints and those were dismissed on withdrawal. The remaining money claim was listed for hearing which was scheduled to take place on 27 May 2021 with a time estimate of ½ day. That order and notice of hearing was sent to the parties on 28 February 2021.
3. That hearing was conducted by Employment Judge Reed remotely by CVP on 27 May 2021. Mr Woollcott attended on behalf of the respondent but there was no attendance by the claimant. Judge Reed dismissed the claims under rule 47 of the Employment Tribunal Rules of Procedure 2013 and his judgment was sent to the parties on 24 June 2021.

4. In the meantime the claimant applied for a reconsideration on 3 June 2021. Before the written judgment had been sent out he had been told over the phone that when he did not attend the video hearing the claim had been dismissed. With his application, he provided screenshots of email inboxes.
5. The body of the email from the claimant said,

“on my trail (sic) day on the 27/05/19 ... I received a phone call (a day before), I have been told that I will receive a link allowing me to attend the video conference the following day I took a day off I did prepare everything all the evidence dates and the rest ! Got everything ready for that day the day I was waiting for nearly 2 years ! unfortunately never got that email kept checking my inbox and my junk !!”
6. The screenshots appeared to show an email in his Junk folder sent on Wednesday (i.e. the day before the hearing) from the Tribunal asking for him to confirm participation in the hearing the following day. The screenshots he sent with the application did not include the email that was sent by the tribunal on 26 May 2021 with the CVP hearing link that would enable him to join it. That was received by the respondent who attended. The claimant’s correspondence was treated as an application for reconsideration which had better than no reasonable prospects of success so Judge Reed directed that the claim be listed for a reconsideration hearing.
7. The application for reconsideration is made under rule 71 of the Rules of Procedure 2013. The hearing was allocated to me, since Judge Reed did not make any substantive decision in the case and therefore there was no reason for it to be reserved to him. The question is therefore whether it is necessary in the interests of justice to reconsider the judgment dismissing the claim. The claimant’s argument is, essentially, that he did not receive the joining link enabling him to join the hearing, therefore that his non-attendance was not deliberate but due to circumstances outside his control and he should be permitted an opportunity to argue the substantive claim.
8. It seems to me that the starting point is that I need to be satisfied that the claimant did not in fact receive the means by which he should be able to attend the hearing and that he has provided a good explanation for his non-attendance – an explanation which suggests that his non-attendance was outside his control. I also need to consider the broader questions of the interests of justice in deciding whether or not to allow his application for reconsideration.
9. This hearing was listed to take place in person but has in fact been conducted by CVP because the parties did not attend at the tribunal hearing centre. I caused the administration to contact the parties. The respondent provided the explanation that they had misread the notice of hearing that they received that was sent to the parties on 28 November 2021. The claimant said that he had not been aware of the date of the hearing for reasons which he was not able to explain. However, on Sunday 20 March 2022 he sent some documents to the Tribunal in advance of the hearing. When the Tribunal offered the option of continuing with the hearing by CVP both claimant and respondent agreed.
10. I am grateful to the parties for making themselves available in order to have this hearing and proposed that I start by considering the reconsideration and application

and then consider if it was successful whether the hearing of the claimant's remaining claim should go ahead.

11. The respondent argued that it is not in accordance with the interests of justice for Judge Reed's judgment to be revoked because they, trusting to the dismissal of the claim, had deleted documents that they would otherwise have relied on in support of their argument that the claimant was only to be paid on the signing of timesheets. They asserted that these documents are no longer available to them.
12. The claimant argues that it would be in the interest of justice to allow him to pursue his case because he is owed a little more than £700 (on his case) for non-payment of hours that he worked for the respondent for which the claimant says the work that he did was of a perfectly satisfactory nature. He argued that he should not be deprived of the opportunity to argue his case simply because the joining instructions had not been delivered to his email inbox.
13. I have taken into account that the claimant has brought a claim for wages which he says he was owed which are no doubt a sizeable sum of money for him. I therefore do not underestimate the importance of the issues to him.
14. However, I am not satisfied that the claimant's explanation for his non-attendance on the last occasion is satisfactory. As I say in paragraph 6 above, the documentary evidence provided by him only demonstrated that the previous day's email requesting contact details was in his Junk folder. He asserts that he did not receive the link, having been warned the day before the hearing to expect it. He has not demonstrated that it was sent to his Junk folder. I did not receive a satisfactory explanation for that email being in the screenshots but not the email with the link which the claimant also alleges went astray.
15. In any event, checking in the Junk folder would have been a reasonable step to take. The respondent received the joining instructions for the 27 May 2021 hearing and I can see from the Tribunal file that the correct email address for the claimant was used at the same time. I also take into account all the interests of justice that have been explained to me and I have decided to refuse the application for reconsideration and the original judgment will stand.

Employment Judge George

Date: ...23 June 2022

Sent to the parties on: 24 June 2022

For the Tribunal Office