



EMPLOYMENT TRIBUNALS

Claimant: Miss M Luca

Respondent: Huo Guo Limited

HELD by telephone at Newcastle ON: Wednesday 22 June 2022

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: In person

Respondent: Ms Gunyi Li (Director)

Interpreters: Romanian for the claimant: Miss Carmen Hales
Mandarin for the respondent: Miss Shu-Hui Poon

JUDGMENT

1. The respondent's application for a reconsideration of the Judgment promulgated on 29 December 2021 is refused. It is not in the interests of justice for there to be a reconsideration.

REASONS

1. In her claim form presented on 14 July 2021, the claimant made a complaint of unauthorised deduction from wages. Before issuing the claim, the claimant had been through the ACAS early conciliation process. The respondent today confirmed that it had taken part in that process.
2. The claim form was served upon the respondent by letter dated 15 July 2021 which was sent to the respondent's address at 41 Stowell Street, Newcastle-upon-Tyne, NE1 1YB. It is accepted by the respondent as being its correct address. The accompanying letter to the respondent from the Tribunal clearly states that the response form ET3 must be returned to the Tribunal by not later

than 12 August 2021. That letter has not been returned to the Employment Tribunal by the post office and it is presumed to have been served upon the respondent. Indeed, Ms Li today confirmed that the letter had been received, although she insisted it had not been seen until several weeks thereafter.

3. The respondent failed to present its response by 12 August. The claimant was entitled to a default Judgment under Rule 21 of the 2013 Rules. The Tribunal was unable to issue a Judgment without further information from the claimant about the sum being claimed. By letter dated 18 August the claimant was asked to provide further information about her claim. A copy of that letter was also sent to the respondent at the same address. Again the respondent failed to reply.
4. By notice dated 20 September 2021 and again sent to the respondent at that address, the parties were notified that there would be a hearing on 10 December to consider what, if any compensation, should be awarded to the claimant. Again the respondent failed to reply.
5. The claimant attended the hearing on 10 December. No one from the respondent attended. After hearing full sworn evidence from the claimant, the Tribunal awarded the claimant Judgment in the sum of £5088 in respect of wages unlawfully deducted.
6. That Judgment was sent to the respondent at the same address by letter dated 29 December. On 25 January 2022 the respondent wrote to the claimant saying they had received the Judgment and that they had “never received any letter from the government – because the letter was sent to 41 Stowell Street this address is a whole building including different companies and restaurant so we did not receive any letters until other neighbours sent it to us on 29 December”. No explanation was given as to why it had taken a further 4 weeks for the respondent to reply to the Tribunal.
7. The Tribunal replied to that letter on 2 February, explaining to the respondent that if it wished to apply for a reconsideration of the Judgment it should do so in writing and that the letter must be accompanied by the completed Form ET3. The respondent replied on 9 February asking how to complete the Form ET3. The Tribunal replied on 11 February stating that it could not give legal advice and that the respondent should consult the government website or seek independent legal advice. Miss Li today explained that she had attempted to obtain legal advice, but chose not to do so because of the cost.
8. The next letter from the respondent is dated 15 March. Again, there was no ET3 attached to that letter. The next letter from the respondent is dated 15 March, again without the Form ET3. The final letter is dated 30 March, with which the Form ET3 was included.
9. Miss Li’s explanation to the Tribunal today was that there are several companies which occupy the building at 41 Stowell Street and that the original letter from the Tribunal had not been received. Miss Li informed me that someone else in the building had provided a box full of letters to the respondent in the early part of this year and only then did the respondent become aware of the proceedings. I did not accept Miss Li’s evidence in that regard. Miss Li confirmed that she has a degree in multi media journalism from Newcastle University. Miss Li confirmed that the company was engaged in the government’s job retention scheme during the Covid pandemic. I was not satisfied that the company was able to deal with the administrative

responsibilities involved in that scheme and yet be unable to deal with the completion of a relatively simple Employment Tribunal response form ET3.

10. I was sceptical about Miss Li's explanation that the first they became aware of the proceedings was when they received the Judgment.
11. Rule 70 of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 states as follows:-

"A Tribunal may either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any Judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."

Rule 71:

"Except where it is made in the course of the hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record or other written communication of the original decision was sent to the parties or within 14 days of the date when the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary."

12. Rule 72 permits the Judge to consider the application in writing if there is no reasonable prospect of the original decision being varied or revoked. I chose not to do so and considered it in accordance with the overriding objective (to deal with the case justly) to give the respondent an opportunity to explain its position, so that I could consider whether the application for a reconsideration had any reason has any reasonable prospects of success.
13. For the reasons set out above, I am not satisfied from Miss Li's explanation that the application for a reconsideration has any reasonable prospect of success. The application is made well outside the 14 day time limit. I am not satisfied with the explanation as to why it has taken so long for the application for a reconsideration to be made. I am not satisfied with the explanation as to why it took so long for the response Form ET3 to be presented. I am not satisfied with the explanation from the respondent about the original documentation not being received by them.
14. The application for a reconsideration is refused and the Judgment is confirmed.

G Johnson

Employment Judge Johnson
Date 28 June 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 shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.