EMPLOYMENT TRIBUNALS

Claimant: Mr M Singh

Respondent: Casey Farquharson trading as Commun IT (1)
Commun IT CIC (2)

Heard at: Watford Employment Tribunal (in public; by video)

On: **7 June 2022**

Before: Employment Judge Quill (Sitting Alone)

Appearances
For the Claimant: In Person
For the respondents: No appearance and no representation

JUDGMENT

1. The judgment against Casey Farquharson trading as Commun IT ("R1) dated 24 September 2021 and sent to parties on 11 October 2021 is revoked.

2. The Claimant's employer at the relevant times was Commun IT CIC, Registered Company Number 10565851 ("R2).

3. R2 has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of **£1268.60** (after making lawful PAYE deductions, if any)

4. The claimant was dismissed in breach of contract in respect of notice and R2 is ordered to pay damages to the claimant in the sum of £**320**. (No evidence of tax and national insurance deduction having been provided to the claimant by the respondent)

5. R2 has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of £**191.70** (£42.60 per day for 4.5 days).

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

70. Principles
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.

71. Application
Except where it is made in the course of a 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 that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72. Process
(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked(including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1), requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

4. Under the current version of the rules, there is a single ground for reconsideration — namely, "where it is necessary in the interests of justice". When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding

objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

5. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. The old specific grounds were unnecessary because an application relying on any of those arguments can still be made in reliance on the "interests of justice" grounds.

6. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

7. Rule 47 states:

47. Non-attendance
If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

8. R1 did not attend and all practicable enquiries were made, without success. An email was sent telling him the hearing was starting, but there was no reply. He had not supplied a telephone number. I was satisfied that R1 had received the notice of hearing sent in March 2022, and the link to join sent yesterday, 6 June 2022.

9. R2 did not attend. R2 had been sent the notice of this hearing in March 2022. R2 had not supplied any contact details to the tribunal and a link to this video hearing could not be emailed.

10. The clerk checked the waiting rooms and no-one for either respondent had arrived by 10.15am. (The notice of hearing specified a video hearing, but neither respondent turned up seeking to participate in an in person hearing, or contacted the tribunal seeking joining details for video, or seeking a conversion to another type of hearing).

11. I had a brief discussion with the Claimant at 10am, who informed me that he had had had no contact from the Respondent. At 10.10am, the hearing resumed and neither respondent was present. (I had monitored the video lobby during the adjournment, and no-one had attempted to log in during the break.)

12. The email address used to contact R2 was correct, because he had written to tribunal from that address and included it on a form ET3 submitted following my orders that he submit one. .

13. A postponement is not appropriate as there is no reason to think that either respondent would attend the resumed hearing. In any event, that would not be fair to the Claimant who was ready and able to proceed today. In the interests of justice, I decided to proceed in the absence of R1.

14. Rule 21 states:

    21.— Effect of non-presentation or rejection of response, or case not contested
    (1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.
    (2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone.
    Where a Judge has directed that a preliminary issue requires to be determined at a hearing, a judgment may be issued by a Judge under this rule after that issue has been determined without a further hearing.
    (3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.

15. As per Limoine v Sharma EAT 0094/19, it is an error of law to enter judgment simply because the claim is undefended without proper consideration of the matter. Furthermore, the Presidential Guidance on the correct approach must also be taken into account.

16. Judgment should not be granted under Rule 21 unless, taking account of the fact that the Claimant's assertion are uncontested, I am satisfied that, in law, the factual basis for doing so is made out. In doing so, I must decide, and take into account, where the burden of proof lies. I should also take into account all of the available information.

17. R2 had been sent notice of claim on 16 March 2022, and was informed that the deadline for a response was 13 April 2022. That, therefore, was the expiry of the time limit as per Rule 21(1).

18. By letter dated 16 March 2022, R2 (and R1) had been informed of R2's right to take part in the 7 June 2022 hearing.

19. There was no application (under Rule 21(3) or at all) for R2 to be heard at today's hearing.

20. The Claimant's position is that he did sign a version of the contract, with his name and address completed, and hand it to Casey Farquharson. That contract names R2 as employer. He acknowledges that his bank statements show payments from R2.

21. Notwithstanding any ambiguity in the email correspondence, and/or in what the Claimant was told orally by Casey Farquharson, I am satisfied that I have sufficient evidence to make a decision, and the decision is that R2 was the Claimant's employer and R1 was not.

22. I take into account that R1 had sufficient opportunity to defend the claim prior to judgment being issued and the inconvenience he has caused to the Claimant by failing to comply with the rules. I also take into account that he asked for reconsideration and then did not

attend this hearing after it was arranges. I take into account the public interest of finality of judgments, and the requirement of the rules that a named respondent which wishes to raise a defence (whether the defence is "I was not the employer" or anything else) should enter a response. I take into account that, to act fairly to the claimant in the individual case and to other tribunal users, it is not in accordance with the over-ridign objective to allow respondents who have failed to enter responses to simply avoid the effects of judgment by taking the steps, after judgment was issues, that they ought to have taken before hand. I take into account that, as things stand, R1 has still not had a response accepted by the tribunal (he extension of time request being one of the matters which was due to be considered today).

23. All that being said, it is not in the interests of justice that R1 have this judgment against him, when the evidence shows that he was not the employer. For that reason, I revoke the 2021 judgment against R1.

24. I am also satisfied that I have sufficient evidence to decide on the Claimant's claims against his employer. He was entitled to, and did not receive, the sums mentioned in the earlier judgment. However, the employer, and therefore the person liable for those payments, is Commun IT CIC, Registered Company Number 10565851 ("R2).

25. I therefore give judgment against R2.

Employment Judge QUILL

Date: 7 June 2022

JUDGMENT SENT TO THE PARTIES ON
AND ENTERED IN THE REGISTER
29 June 2022

FOR THE TRIBUNAL OFFICE