Case No: 3312414/2020

EMPLOYMENT TRIBUNALS

Claimant: Ms M Domanska

Respondent: The Chair (Buckingham) Limited

Heard at: Cambridge (by CVP and telephone) **On:** 4 July 2022

Before: Employment Judge Tynan (sitting alone)

Representation
Claimant: In Person
Respondent: Mr M Lowrie, Director

UPON THE RESPONDENT'S APPLICATION dated 15 February 2022 to reconsider the judgment dated 6 January 2022 (sent to the parties on 8 February 2022) under rule 71 of the Employment Tribunals Rules of Procedure 2013.

JUDGMENT

1. The Tribunal determines that it is necessary in the interests of justice to reconsider its Judgment dated 6 January 2022.

2. On reconsideration, paragraphs 1 to 6 of the Tribunal's Judgement are revoked and the Tribunal makes case management orders instead.

3. On reconsideration, paragraph 7 of the Tribunal's Judgment, namely the Time Preparation Order in the sum of £820, is confirmed.

RESERVED REASONS

Background

1. On 6 January 2022 I gave Judgment in favour of the Claimant in the absence of the Respondent. I set out in my Reasons why, having first made contact with Mr Lowrie of the Respondent to ascertain whether the Respondent would attend the hearing or be represented at it, I decided to proceed in its absence.

2. Through Mr Lowrie, the Respondent raised a complaint about the matter by email dated 15 February 2022. Of the Tribunal's own initiative, the email was treated as an application by the Respondent for reconsideration of the Judgment.

3. Mr Lowrie's conduct on the telephone on 6 January 2022 was hostile and disrespectful, and at times he has also expressed himself in angry terms in correspondence. Be that

as it may, it is not the function of the Tribunal to punish the Respondent for his loss of control of his emotions on 6 January 2022, rather to remain focused on the interests of justice and whether a fair trial is still possible in this case. In my judgement, a fair trial is undoubtedly still possible; the issues in dispute are well understood by the parties and remain capable of being addressed by them in evidence to the Tribunal. In terms of the case being got ready for a full merits hearing, Mr Lowrie stated his personal support for the Employment Tribunal system, as well as his commitment to ensure the Respondent complies with any Orders of the Tribunal and to conduct himself professionally at any future hearing. I consider that it would be a disproportionate response to Mr Lowrie's conduct on 6 January 2022 and to the Respondent's earlier breaches of the Tribunal's Orders to prevent the Respondent from defending the Claimant's claims against it, particularly in circumstances where its Form ET3 and correspondence with the Tribunal disclose plainly arguable grounds for resisting the claims that have been brought against it. I am equally mindful that should the Judgment stand, without the Respondent being afforded a reasonable opportunity to challenge the claims that have been brought against it, this might have implications for the Respondent's continuance as a going concern.

4. That is not to say that if Mr Lowrie cannot control his emotions in future, that there will be no consequences for the Respondent; on the contrary, the Tribunal will always be alive to scandalous, unreasonable or vexatious conduct, given that such conduct provides grounds to strike out a Claim or Response under Rule 37 of the Tribunals Rules of Procedure.

5. I take into account the unfortunate history to the proceedings, specifically Mr Lowrie's wasted journey to Cambridge on 9 July 2022. I can understand why, particularly given that he is self-employed, he wanted to be certain that the hearing on 6 January 2021 would go ahead before committing to attend. Ordinarily, I might have limited sympathy for a party who failed to attend a hearing of which they had had prior written notice (in this case the Respondent had been on notice of the hearing since August 2021). However, I do not lose sight of Mr Lowrie's previous unhappy experience (and which he would say is borne out by the further confusion that arose on 17 June 2022 when the scheduled hearing did not proceed). On the other hand, it would have been a simple matter for Mr Lowrie to have explained the position to me when I called him on 6 January 2021. My responsibility as a Judge is to afford parties a fair hearing, to listen carefully and with an open mind to what they have to say before making decisions that may affect them. That is precisely why I made contact with him on 6 January 2022. Unfortunately, he shouted at me, talked over me and swore at me on that occasion. It was only towards the end of the hearing on 4 July 2022 that there was some recognition on Mr Lowrie's part that his conduct on 6 January 2022 had been unhelpful. I have weighed in the balance that prior to 9 July 2021 the Respondent had filed its Response late and had failed to comply with any of the Tribunal's Case Management Orders (and was warned by letter dated 30 May 2021 that this could result in the Respondent being penalised or having its Response struck out). The Respondent certainly did not come to the hearing on 9 July 2021 with 'clean hands'.

6. It is not just the Respondent who has rights in this matter; I am required to do justice as between the parties. These proceedings can only go forward on the basis, and with the clear understanding, that the Respondent will comply with any Case Management Orders I make so that the case can be disposed of when it comes back for Final Hearing. It is my intention to make an Unless Order, so that should the Respondent fail to serve its Witness Statement(s) on the Claimant prior to the Final, then its Response is very likely to be struck out, in which event the Claimant will be entitled to a Judgment against it.

7. Pursuant to Rule 76 of the Tribunals Rules of Procedure I am required to consider making a Time Preparation Order where a party has acted abusively, disruptively or otherwise unreasonably in the way that the proceedings were conducted. Mr Lowrie's conduct on 6 January 2022 met that threshold test. If he was uncertain whether the

hearing would go ahead and indeed, even if he believed that it would not go ahead, that does not justify his conduct when I phoned him. It would have been a straightforward matter to re-list the hearing on a date convenient to the parties had I been satisfied that there was a reasonable explanation for the Respondent's non attendance. No such explanation was forthcoming on 6 January 2022 or, at least, could not be discerned in circumstances where Mr Lowrie was shouting at and talking over me.

8. In making a Time Preparation Order on 6 January 2022, I had regard to the nature, gravity and effect of the Respondent's conduct, making due allowance for Mr Lowrie's relative lack of objectivity in the matter and emotional involvement in the issues. In the exercise of the discretion available to me, I was satisfied that it was just and proportionate for the Respondent to be responsible for the Claimant's time preparing for the hearing. That remains my view. Even had Mr Lowrie attended the hearing on 6 January 2022 it seems to me that the hearing would inevitably have been postponed given the Respondent's failure to comply with the Tribunal's Orders. In other words, the Claimant's time preparing for the hearing was inevitably wasted as a result of the Respondent's unreasonable conduct of the proceedings. For these reasons I confirm that the Time Preparation Order stands and that the Respondent must therefore pay the Claimant the sum of £820 as previously ordered.

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Employment Judge Tynan

Date: 15 July 2022

JUDGMENT SENT TO THE PARTIES ON:

18 July 2022

FOR THE TRIBUNAL OFFICE