



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Ms Poh Hong

AND
In partnership as the Penmorvah Manor Hotel

Respondent
Mr & Mrs P Risely

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bodmin

ON

21 July 2022

EMPLOYMENT JUDGE N J Roper

Representation:

For the claimant: Did not attend

for the Respondent: Mr and Mrs P Risely in person

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that

1. The correct name of the respondent is Mr Mrs P Risely in partnership as the Penmorvah Manor Hotel, and the record as amended accordingly; and
2. The claimant's application for reconsideration is refused and the Judgment striking out her claim is confirmed.

RESERVED REASONS

1. The claimant has applied for a reconsideration of the judgment dated 27 January 2022 and which was sent to the parties on that same day ("the Judgment"). The application was made in an email dated 1 March 2022 which was received at the tribunal office on that day.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore not received within the relevant time limit.

3. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
4. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
5. The circumstances of this case and the grounds relied upon by the claimant are as follows:
6. The claimant was employed as a Chef at the respondent hotel for a period of five weeks from 24 May 2021 until 27 June 2021 when her employment was terminated by reason of capability (performance). The claimant presented these proceedings on 24 September 2021. She brought three monetary claims: for an unauthorised deduction of £80.00 relating to accommodation costs; for unpaid salary amounting to 12 unpaid hours at £14 per hour totalling £168.00; and for unspecified accrued but unpaid holiday pay.
7. The respondent entered a response in which it admitted that owing to error in the payroll system, the sums claimed were indeed due to the claimant, and that they had now been paid in full on 30 July 2021. This included holiday pay calculated in accordance with the relevant regulations and rounded up to 3 days in the sum of £315.00.
8. The Tribunal Office then wrote to the claimant to ask her to confirm the sums claimed had been paid in full and that her claim could be withdrawn. The claimant failed to respond. By email dated 18 January 2022 the Tribunal Office then notified the claimant that it was proposed to dismiss her claim on withdrawal and that if she had any objections then she was to notify the tribunal by return. The claimant failed to respond to that correspondence and by judgment dated 27 January 2022 (and sent to parties on that day) I entered judgment striking out the claimant's claim on the basis that it had not been actively pursued.
9. On 1 March 2022 the claimant emailed the Tribunal office confirming that she objected to the proposal to strike out her claim and requested: "please I would like to request for more time to respond for reconsideration because I had been very ill for three weeks". At my direction the Tribunal Office then wrote to the claimant on 8 March 2022 confirming that her claim had already been struck out on the basis that the sums claimed had already been paid and the claimant had failed to pursue her claim but that if she wished to seek reconsideration of that judgment she was directed to enclose the following information: (i) why she failed to comply with the earlier tribunal orders and had not pursued her claim; and (ii) if this related to illness then medical evidence in support of that contention; and (iii) setting out exactly what sums were claimed from the respondent and how they had been calculated, bearing in mind the respondent's assertion that all sums had already been paid in full.
10. By email dated 10 March 2022 the claimant wrote to explain her position. She stated that her failure to comply with the tribunal order was unintentional, and that she had been "very ill and bedridden for about three

- weeks". She did not provide any medical evidence in support and suggested that this was because she had had an ambulance home visit. The claimant also acknowledged the payments made by the respondent but argued that she was still owed a total of £501.54, which consisted of unpaid wages for her last working day, the unauthorised deduction of accommodation costs of £80.00, and holiday pay of £85.54.
11. By letter dated 14 March 2022 the respondent's solicitors then wrote to the tribunal to oppose the claimant's application for reconsideration and explaining again that all sums claimed on the claimant's claim form had been paid in full, and any new claim for wages would amount to a new claim which was time-barred.
 12. I then directed that the application for reconsideration, which was opposed by the respondent, should be listed for hearing and by notice of hearing dated 24 March 2022 the application was listed in person on 25 May 2022. The claimant then sought a postponement, which was granted, and the case was relisted to be heard on 21 July 2021. It was suggested that the hearing might be heard remotely by video, but the respondent objected and wished for the hearing to be heard in person. The parties were then notified that the hearing would proceed in person.
 13. By email dated 19 July 2022 (two days ago) the claimant notified the tribunal that she was now working in West Wales and at that it would be difficult for her to travel to the hearing in person. She requested again that it be heard by video. By email dated 20 July 2022 the claimant was informed that that application had already been considered and that today's hearing remained in person. The claimant did not apply for a further postponement.
 14. The claimant then sent an email to the tribunal office late yesterday evening (20 July 2022 at 16:33) stating: "I would like to appeal of this decision. Please provide me info how to proceed my appeal".
 15. The respondent attended in person this morning to oppose the claimant's application. The claimant did not attend.
 16. The correct name of the respondent is Mr and Mrs P Risely in partnership as the Penmorvah Manor Hotel.
 17. Having considered the documents presented to me by the respondent it does appear clear that the respondent has paid in full the amounts claimed by the claimant in her originating application.
 18. The claimant's application for reconsideration of the Judgment is refused for the following five reasons.
 19. First, the application for reconsideration was made out of time. The claimant was informed that if she wished to rely on any medical reason for delay then evidence in support should be provided. She did not do so, and in any event the alleged period of illness of three weeks does not explain the full period of delay before submitting the application.
 20. Secondly, the claimant did not attend to pursue her application, despite being informed that her application for a remote hearing by video had been refused, and that the hearing would proceed in person.
 21. Thirdly, the claimant did not make any application to postpone this hearing.

22. Fourthly, it seems clear on the face of the relevant documents that the claimant's claim as originally presented to the Tribunal has already been paid in full.
23. Finally, bearing in mind all of the above, in my judgment the balance of prejudice lies in refusing the application and it is not in the interests of justice to allow the application. To allow the application would continue to involve the respondent in defending these proceedings which the claimant has only sporadically pursued, in circumstances where the original claim has already been paid in full
24. in my judgment this is consistent with the case law relating to relief from sanction which includes The Governing Body of St Albans Girls School v Neary [2010] IRLR 124 1190, and Thind v Salvesen Logistics Ltd UKEAT/13/01/2010
25. it was noted by Underhill P in Thind: "The tribunal must decide whether it is right, in the interests of justice and the overriding objective, to grant relief to the party in default notwithstanding the breach of the unless order. That involves a broad assessment of what is in the interests of justice, and the factors which may be material to that assessment will vary considerably according to the circumstances of the case and cannot be neatly categorised. They will generally include, but may not be limited to, the reason for the default, and in particular whether it is deliberate; the seriousness of the default; the prejudice to the other party; and whether a fair trial remains possible. ...Each case will depend on its own facts...I would not wish it to be thought that it will be usual for relief to be granted...there is an important interest in tribunals enforcing compliance, and it may well be just...for a claim to be struck out even though a fair trial would remain possible."
26. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because it is not in the interests of justice to allow it, and the original Judgment striking out the claimant's claim is confirmed.

Employment Judge N J Roper
Date: 21 July 2022

Judgment sent to Parties on
25 July 2022 by Miss J Hopes

FOR THE TRIBUNAL OFFICE