



EMPLOYMENT TRIBUNALS

London South Employment Tribunal on 8th September 2022

Claimant

Between

Respondent

Mr Siarhei Karpovich

&

Kisiel Limited

Before

Appearances

Judge M Aspinall (Sitting as an Employment Judge)

None - interlocutory

REFERRAL TO JUDGE Judgment

1. This claim was issued in the Employment Tribunals (London South) by the Claimant on 22 December 2021. The claim comprises headings of unfair dismissal, breach of contract and claims for holiday pay and unpaid wages/unlawful deductions from wages.
2. By letter dated 13 January 2022, the Tribunal gave the Respondent notice of this claim and directed them to respond - if they wished to defend the claim - by 11 February 2022.
3. By letter of 27 June 2022, the Tribunal warned the Respondent that because a response had not been received, a judgment could now be issued against them and they would be unable to participate in any hearing save to the extent granted by the presiding Judge.
4. On 4 July 2022, the Respondent's representatives contacted the Tribunal (not copied to the Claimant) to apply for an extension of time, under rule 20, to file their response and for any default judgment to be set aside under rule 20(4). They explained that the Respondent, whilst in receipt of the letters of 27 June 2022, had not received any prior correspondence in respect of this claim.
5. On 5 August 2022, the Tribunal wrote to the Respondent confirming that an extension of time had been agreed by a Judge. They were given until 2 September 2022 to file their response to the claim.
6. By further email from the Respondents representatives, 16:44 2 September 2022 (again not copied to the Claimant), the Respondent seeks a further 7 day extension for submission of their response. They state that it is in the interests of justice and that the Respondent has an arguable defence, that liability is contested, that the Claimant would benefit from a windfall if there is no response and that such an extension is in accordance with the Tribunal being flexible in its approach (per rule 2(c) of the Rules of Procedure).
7. I find it interesting that the Respondent, in making their further application for an extension of time, seeks to rely on rule 2(c) and the avoidance of unnecessary formality and seeking flexibility. This is a case where, on any reading, the Respondent has had since January 2022 to file their response. Even accepting that they might not have received correspondence prior to the letter of 27 June 2022 (despite all correspondence being sent to the same address in Sandiford Road, Sutton), they have now had a further period of time to prepare a response and have not capitalised upon it.

8. It is unacceptable - more so where, as here, the Respondent is professionally represented - for any party to simply presume that the Tribunal will routinely accede to requests to extend time. Flexibility is one thing, this is something entirely other.
9. **The Respondent's application for an extension of time is refused.** There having been no valid response received in time in accordance with rule 16, despite a generous extension of time granted previously, I have to consider whether there is sufficient material/evidence upon which I could fairly decide the claims under rule 21(2)
10. The Claimant has, in response to a letter sent to him (also on 27 June 2022 a copy which the Respondent acknowledges receiving), provided a detailed schedule of loss dated 27 June 2022. I am satisfied that this appears to be reasonable and properly calculated save that he has claimed for 2 years unpaid holiday when the maximum he could properly claim would be 1 year.
11. **RULE 21 JUDGMENT**
I am satisfied, in the circumstances, that there is sufficient evidence upon which I can dispose of this claim.
12. All claims made by the Claimant succeed. **The Respondent shall pay to the Claimant the sum of £23,238.49 forthwith.**
13. *Breakdown (£)*
Basic award: 1,088.00
Compensatory (immediate loss): 4,731.46
Compensatory (future loss): 5,883.28
Loss of statutory rights: 350.00
ACAS code uplift (25%): 2,741.19
Unpaid wages: 3,724.82
Unpaid holiday (1 year): 2,406.82
Document failures: 2,312.92

Judge M Aspinall on Thursday, 8th September 2022