



EMPLOYMENT TRIBUNALS

Claimant
Mr D Tooze

and

Respondent
Tokyo Customs Ltd

JUDGMENT ON RECONSIDERATION

1. The Judgment of 28 July 2022 is confirmed.
2. The Claimant's claim No. 1401215/2022 is dismissed upon withdrawal.

REASONS

1. 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. This hearing was listed by the Judge for the reasons set out below. IN essence, the Judgment entered under rule 21 had been entered in error in the belief that no response had been served.
2. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so.

Relevant background

3. There have been three associated claims brought by two Claimants against two Respondents;
 - 3.1 No. 1400735/2022 (22 February 2022); Tooze-v-Wall (Claim 1);
 - 3.2 No. 1400811/2022 (27 February 2022); Tooze-v-Tokyo Customs Ltd (Claim 2);
 - 3.3 No. 1401214 & 1401215/2022 (30 March 2022); Taylor & Tooze-Tokyo Customs Ltd (Claim 3).

4. All claims were of unfair dismissal, unpaid redundancy payment, breach of contract relating to notice, unpaid holiday pay and unlawful deductions from wages.
5. It was established that the Claimant had brought Claim 1 against Mr Wall who was not his actual employer and that claim was dismissed upon withdrawal on 2 September 2022.
6. In respect of Claims 2 and 3, the Respondent entered a response on 8 June 2022, although the document only showed Claim 3's claim number. It was clear, however, that it sought to cover both claims. As a response, it was out of time in relation to Claim 3 and, despite invitations to do so, the Respondent did not apply for an extension of time and a Judgment was duly entered in Mr Taylor's favour on 20 September 2022 in Claim 3 (No. 1401214/2022).
7. Because of the error on the response form, the Tribunal did not understand that the response was intended to cover Claim 2 and a Judgment in default was issued in favour of Mr Tooze on 28 July 2022. It became clear, however, that that Judgment had been entered in error because the Response had been received in time on that claim.
8. This reconsideration hearing was therefore listed.

The hearing

9. By an email dated 13 October 2022, Mr Wall indicated that the Respondent had ceased trading in December 2021 and that it would not attend today's hearing. The Respondent was still showing as 'active' on the Companies House website, although a proposal to strike it off was recorded against it.
10. Mr Tooze confirmed to the Judge that the contents of his Claim Form and Schedule of Loss dated 18 July 2022 were still correct. Those documents indicated that;
 - 10.1 He had been employed as a Bodyshop Manager by the Respondent between March 2019 and February 2022;
 - 10.2 The business was run by Mr Ashley Wall and Mr Justin Wall, brothers and Directors;
 - 10.3 The business ran into trouble and the Claimant's wages were not paid;
 - 10.4 At the end of the furlough scheme, he was assured that further investment was to have been made and was persuaded to continue working on without pay;
 - 10.5 In December 2021, the Respondent's landlord intervened and evicted the business. The Claimant's employment then came to an end;
 - 10.6 The Claimant's losses were as set out in the Schedule of Loss.

11. The claimant's losses had been correctly reflected in the Judgment of 28 July 2022. Accordingly, that Judgment was confirmed and the Claimant's additional, duplicate claim (Claim 3, No. 1401215/2022) is dismissed upon withdrawal.

Employment Judge Livesey
Date: 14 October 2022

Judgment sent to Parties: 20 October 2022

FOR THE TRIBUNAL OFFICE