



EMPLOYMENT TRIBUNALS

Claimant: Ms I Abdulnasir

Respondent: Invicta Care and Training Ltd.

Heard at: Watford Employment Tribunal (by CVP)

On: 2 February 2023

Before: Employment Judge Price

Appearances

For the claimant: In person

For the respondent: Mr P Maratos, Consultant

REVOCATION JUDGMENT

1. The judgment sent to the parties on 9 March 2021 upholding the claim is hereby revoked.

REASONS

1. The history of this case is lengthy. The matter first came before the tribunal on 11.2.21. On that date the Claimant attended in person and the Respondent did not, the Respondent was represented by someone called Mr Ali, who held themselves out in correspondence to be a specialist in employment tribunal representation. Neither the Respondent or their representative attended and no explanation was given, and no adjournment sought. The hearing proceeded and Judgment was given for the Claimant.
2. Judgment was sent to the parties on 9.3.21. Mr Ali at a previous hearing in this matter told the tribunal on behalf of the Respondent says this was received on 10.3.21. An application for reconsideration was made on 24.4.21. This was out of time.

3. A hearing was listed and the Respondent attended on 20 January 2022. The tribunal decided not to extend the discretion. This decision was made on 20 January 2022. The reason for this was because Mr Ali stated that Ms Mohammed who attended on behalf of the Respondent and is the owner of the Respondent company was dizzy and was not able to give him instructions as she was in his words not in the 'mood'.
4. An application was then made for that decision to be reconsidered This was dated 22 February 2022 and was made by the Respondent in person. This was made by the Respondent in person. It was not clear from the correspondence what the Respondent was applying for (this was later clarified by her new representative). A hearing was held on 14 July 2022 and the Respondent sought an adjournment on the basis that they had recently instructed a new representative, Peninsular, and that they had yet to have time to prepare for the hearing and take instructions. The Claimant did not attend this hearing. This application was granted and a direction was made that the Respondent write to the tribunal and clarify what application was being made in the letter and to provide any evidence relied upon in support of the application. This was not done.
5. An unless order was made in the same terms requiring the Respondent to write to the tribunal and clarify what application was being made and to provide any evidence relied upon in support of the application by 7 November 2022. This was complied with on the 7 November 2022. In this correspondence the Respondent's representative clarified that they were seeking a reconsideration of the decision not to extend time to hear the initial reconsideration application. The matter was then listed for a hearing on 2 February 2023.
6. Today I have heard evidence from Ms Mohammed the owner of the Respondent's company. Her account today was very different from that previously put on her behalf. She explained that although it was correct that she had had a car accident and was not feeling well in fact she would have been able to attend the original hearing however she was not given notice of it by her previous representatives who she felt had let her down. She said the first time she was aware of the hearing was when she received judgment. At that point she spoke with her representative, and she said she wanted to appeal. It was not the case that she refused to talk about the case or give instructions. Indeed, quite the opposite. The reason that the original reconsideration application was late was that her representative did not present it on time. She said she did not know at the last hearing that she could speak or what to do when her representative did not present her position accurately. However, she was very angry and afterwards realised that she needed help from someone else. She duly instructed new representatives who are assisting her today and she better understands the process now. The Claimant was given an opportunity to ask questions to Ms Mohammed but understandably did not challenge this part of her evidence.
7. I was referred in submissions by the Respondent to the case in *Kwik Save Stores Ltd v Swain and others* [1997] ICR 49. In the *Kwik Save* decision, the EAT held that "... the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is

objectively justified on the grounds of reason and justice". The case established that an Employment Judge should always consider the following three factors. First, the explanation supporting an application for an extension of time. The more serious the delay, the more important it is that the Employment Judge is satisfied that the explanation is honest and satisfactory. Secondly, the merits of the defence. Justice will often favour an extension being granted where the defence is shown to have some merit. Thirdly, the balance of prejudice. If the employer's request for an extension of time was refused, would it suffer greater prejudice than the employee would if the request was granted?'

8. In making this decision, I have considered the overriding objective and the need for the parties to be on an equal footing, and also the need for unnecessary formality and to allow flexibility in the tribunal's approach. I have also considered the need to avoid delay and to act proportionate to the importance of the issues involved.
9. I considered the reason for the delays. I accept Ms Mohammed's evidence that they were essentially not due to her conduct. I accept Ms Mohammed's evidence that she was unaware of the original hearing and also that she was not advised regarding the time limits for reconsideration. I also accept that she did not say to her representative that she was unfit to deal with the matter and that that was therefore not the reason for the delay. I further accept Ms Mohammed on behalf of the Respondent gave instructions to appeal (in this case to seek a reconsideration) to her representative and she believed this was being acted upon. Therefore the delay in dealing with the matter once she had become aware of it was not due to Ms Mohammed's own actions. I also accept the submissions made on behalf of the Respondent regarding the fact there is an arguable case regarding the merits of the defence to the claim.
10. I then moved on to carefully consider the prejudice to both parties were these applications not allowed and weighed the balance of such prejudice. The Claimant would suffer the prejudice of not having the claim resolved in her favour and having to undergo another hearing. However, the Respondent would suffer what I consider is the greater prejudice in not having her evidence heard and decided by a tribunal at all.
11. I recognise that the issues are important to both parties and in my view it would, despite the time taken to date, be a proportionate use of tribunal time to allow for a further hearing in the matter.
12. In all the circumstances, I have decided to allow (a) the application to reconsider the earlier decision of 20 January 2022 regarding the refusal to extend time (b) the application for an extension of time to make a reconsideration application and (c) the reconsideration application itself.
13. Therefore, the matter will be relisted for a final hearing and the following directions (set out below) are made. This matter has now been going on for a very long period of time. It is therefore necessary in order to be fair to all parties that the matter is concluded

as soon as possible. The parties were reminded at the hearing how important it therefore is to comply with all directions.

Employment Judge Price

Date 2 February 2023

JUDGMENT SENT TO THE PARTIES ON

9 February 2023

NG - FOR THE TRIBUNAL OFFICE