



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr S Lenczewski

AND

Respondent

Openwork Limited/Owl Financial

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth ON

12 May 2023

EMPLOYMENT JUDGE N J Roper

JUDGMENT ON RECONSIDERATION

The judgment of the tribunal is that:

1 The two judgments dated 9 March 2022 (sent to the parties on 10 March 2022) and 25 March 2022 (sent to the parties on 8 April 2022) under which the claimant's claim for accrued holiday pay was struck out for failure to comply with a Strike Out Warning are both hereby revoked under Rule 70; and

2 Nonetheless the claimant's claim for accrued holiday pay remains struck out pursuant to Rule 39(4) because the claimant failed to meet the terms of the Deposit Order dated 31 January 2022 (sent to the parties on 10 February 2022).

REASONS

1. This matter is the subject of two appeals to the Employment Appeal Tribunal under reference EA-2022-000666-OO and EA-2022-00675-OO. By Order sealed on 25 April 2023 permission has been granted for the appeal to proceed, but this is limited to that part of the appeal relating to my decision to strike out the claimant's holiday pay claim.
2. Having considered the relevant Employment Tribunal file in detail I have decided to reconsider the various judgments made on my own initiative pursuant to Rule 70.
3. On 31 January 2022 the matter came before me for hearing but owing to illness I was unable to conclude the full hearing. I was able and did make the Case Management Order dated 31 January 2022 ("the CMO") and the attached Deposit Order of the same date ("the Deposit Order"). These two documents were sent to the parties on 10 February 2022.
4. Numbered paragraph 1 on page 2 of the CMO was a Strike Out Warning relating to the claimant's Holiday Pay Claim ("the Strike Out Warning"). In the event that the claimant opposed the strike out of his claim he was ordered to write to the Tribunal setting out the exact basis of the claim and how it was calculated within 14 days.
5. The claimant complied with that order by email dated 24 February 2022, but because of an apparent administrative oversight that email was never drawn to my attention. I therefore gave judgment striking out the claimant's holiday pay claim for failure to comply with the Strike Out Warning on 9 March 2022 (which was sent to the parties on 10 March 2022). I confirmed the same by way of an email dated 10 March 2022 under which I refused reconsideration of the CMO and the Deposit Order. In addition, I confirmed by a further judgment dated 25 March 2022 (sent to the parties on 8 April 2022) that the holiday pay claim was struck out because of the claimant's failure to comply with the Strike Out Warning.
6. Clearly it was wrong of me to strike out the holiday pay claim on the basis that the claimant had failed to comply with the Strike Out Warning when he had done so (although I was unaware at the time that he had done so).
7. I therefore revoke the two judgments confirming that the holiday pay claim was struck out for failure to comply with the Strike Out Warning in the CMO because it is necessary in the interests of justice to do so pursuant to Rule 70.
8. However, I have never varied or revoked the Deposit Order. The claimant made an application to vary the CMO and the Deposit Order which I dealt with by way of an application for reconsideration of those two documents. By email letter dated 10 March 2022 the parties were informed that I had refused the application for reconsideration under Rule 72(1) because in my judgment there was no reasonable prospect of either the CMO or the Deposit Order being varied or revoked.

9. The Deposit Order therefore remained valid and effective. The deadline for payment of the deposit by the claimant in respect of all of his three claims, including the holiday pay claim, expired on 10 March 2022. The Tribunal Finance Support Centre confirmed by email dated 24 March 2022 that the claimant had not paid the deposit as ordered.
10. Accordingly, the claimant's claims, including his claim for accrued holiday pay, are all struck out pursuant to Rule 39(4) for non-payment of the deposit ordered in the Deposit Order.

Employment Judge N J Roper
Dated: 12 May 2023

Judgment sent to Parties on 22 May 2023

For the Tribunal Office