



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Peeke

Respondent: TACS (SW) Ltd

Heard at: Bristol (by CVP)
2023

On: 08 September

Before: Employment Judge Gray-Jones

Representation

Claimant: In person

Respondent: Did not attend and was not represented

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The Respondent's application, sent via emails on 08 September 2023 at 7.39am and 10.12am, to postpone the hearing is refused.
2. The Respondent's application dated 17 May 2023 for reconsideration of the judgment sent to the parties on 02 May 2023 is refused as it has no reasonable prospects of success.

REASONS

3. The Respondent's director, Mr Goldsby-West, had submitted an application to postpone the hearing by email on 07 September 2023. That application was considered by Regional Employment Judge Pirani and refused for the reasons set out in the email notifying the Respondent of the refusal. In response to that email Mr Goldsby-West submitted further emails to the Tribunal at 7.39am and 10.12am on 08 September 2023. I treated those emails as a renewed request for postponement.
4. The Respondent's director did not attend at the commencement of the hearing and I therefore ordered that the hearing be put back so that attempts could be made to contact him by telephone. I also arranged for an email to be sent to him notifying him that the hearing would be commencing at 11am and that any request for a postponement should be made at the hearing. The email notified him that if he was unable to attend

due to lack of computer equipment he could attend by telephone, either by calling in or being called by the Tribunal at the start of the hearing. I was informed that when the email was sent to Mr Goldsby-West an Out of Office response was received stating that he was away from 08 September 2023, and that when the clerk to the Tribunal contacted the Respondent's director by telephone following this email Mr Goldsby-West was emphatic that he would not be attending the hearing either via video or by telephone. When the hearing commenced at 11am Mr Goldsby-West did not attend and in the circumstances, I considered that there would be no further benefit in making further attempts to contact him and so proceeded with the hearing.

5. As far as the postponement application is concerned this was essentially based on three grounds. The first of these was that Mr Goldsby-West was, for the reasons stated in the email, unfit mentally and physically to attend the hearing. The second ground was that he did not have the necessary equipment to participate in a remote hearing, even if he could join by telephone. The third ground was that it would not be possible for there to be a fair hearing, and for him to ask the Claimant the questions he wished to ask her, unless the hearing was held in person.
6. As far as the first ground is concerned, the request for postponement, like the ones made the previous day, was not accompanied by any medical evidence. I took account of the Presidential Guidance on Postponements and considered that the lack of any medical evidence, of any description, supporting the Respondent's director's description of his medical condition, his assertion that he was too unwell to participate in a hearing, and providing a prognosis on his condition, was fatal to this ground of the application.
7. In relation to the second ground, I was confused by the statement in the email that the Respondent's director was unable to participate in the hearing by telephone because he did not have a landline. This would not have prevented his taking part in the hearing by mobile phone, and it was clear that on the morning of the hearing he could take calls using a mobile phone. As such I rejected this ground.
8. The final ground was simply an assertion, and no details or reasons were provided to explain why the hearing would not be fair unless it was held in person, and in particular why the Respondent's director could not ask the Claimant the correct questions unless the hearing was in person. It is now common for hearings to be conducted remotely and there was nothing to justify postponing this hearing simply because it was a remote hearing, particularly when the application was made at such a late stage.
9. I therefore rejected the postponement application.
10. Turning to the application for reconsideration, this was submitted on 17 May 2023 in respect of a judgment issued by Employment Judge Gray which was sent to the parties on 02 May 2023. The basis of the application was stated as being that the Respondent, "*was not sent the paperwork in order for me [sic] to defend myself and make a counter claim against Mrs Peake [sic] because of her incorrect information shown on her CV and the*

cost to me.”

11. 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 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
12. Rule 71 provides that an application for reconsideration must be submitted to the Tribunal within 14 days of the date the decision (or, if later the written reasons) were sent to a party.
13. In these proceedings the judgment was entered under Rule 21, as the Respondent had failed to file a response within the time limit set out under Rule 16. Under Rule 20 a Respondent may apply for an extension of time to file a response. Such an application must be in writing and set out the reason why the extension of time is sought and, unless the time limit under Rule 16 has not expired, must be accompanied by a draft of the response which the Respondent wishes to present or an explanation of why this is not possible.
14. Although it had applied for reconsideration of the judgment the Respondent had not submitted an application for an extension of time for filing a response together with a draft response or an explanation of why this was not possible. On checking the Tribunal file I noted that a letter had been sent to the Respondent on 23 January 2023 notifying it of the requirement to apply for an extension of time under Rule 20 if it wished to defend the claim together with a draft ET3 form. This was sent to Mr Goldsby-West by email (the same email address as that from which the postponement applications of 07 and 08 September 2023 had been made). I was therefore satisfied that the Respondent was on notice of the need to file a response if it wished to defend the claim.
15. I considered that the failure to apply for an extension of time for a response and provide a draft response setting out the grounds on which the Respondent intended to resist the claim was fatal to the application for reconsideration and that in light of this there was little reasonable prospect of the judgment or any part of it being varied or revoked. Accordingly, I dismissed the application.
16. I also noted that the application appeared to be out of time by one day. Although this was a relatively short period of delay and time may have been extended if an explanation had been received from the Respondent and the application had substantive merit, in the absence of such an explanation and the failure to apply for an extension of time for a response I considered that this was an additional reason for refusing the application.

Employment Judge Gray-Jones
Date: 14 September 2023

Judgment sent to the Parties: 3 October 2023

FOR THE TRIBUNAL OFFICE

Note

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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