



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Carroll

Respondent: Lee Wainwright

Heard at: Manchester (by CVP)

On: 4 January 2024

Before: Regional Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: In person

RECONSIDERATION JUDGMENT

Upon reconsideration, the Judgment sent to the parties
on 4 September 2023 is revoked.

REASONS

Introduction

1. On 30 May 2023 the claimant presented a claim form which identified the respondent in box 2.1 as Lee Wainwright. The claim was served by a letter of 23 June 2023 and at the same time listed for a hearing on 21 August 2023.
2. On 18 August 2023 the case was referred to me because no response form had been received, and I directed that the hearing be cancelled.

3. On 21 August 2023 I signed a Judgment in favour of the claimant under rule 21 ordering the respondent to pay a total of £846.38. That Judgment was sent to the parties on 4 September 2023.
4. Within ten minutes of receiving the Tribunal's email Mr Wainwright applied for the Judgment to be reconsidered and revoked. He said that his company Smaartmove Sales Limited was the correct respondent, and that the company had not received any notice of the claim and therefore not had an opportunity to defend the claim.
5. That application for reconsideration was listed for hearing today.
6. Mr Wainwright submitted a number of documents prior to the hearing. Unfortunately these were not copied to the claimant as rule 92 requires, and she only received them from the Tribunal a few minutes before the hearing. Those documents included a proposed response form supplied on 16 December 2023, and an offer letter, template contract of employment and copy of the staff handbook supplied together with a payslip and a P45 on 3 January 2024.
7. I heard oral evidence on affirmation from Mr Wainwright, and both sides summarised their cases before I made my decision on whether to confirm or revoke the Judgment.

Findings of Fact

8. Based on the documents and the oral evidence I made the following findings of fact relevant to this application.
9. The claimant was employed by Smaartmove Sales Limited between the summer of 2022 and February 2023, when her employment ended abruptly. That company was incorporated in June 2021 and at the relevant time its registered office, according to Companies House, was 78 Water Lane, Wilmslow, SK9 5BB.
10. The company vacated those premises in February 2023, shortly after the claimant's employment had ended, and moved to an address in Altrincham. The offices at 78 Water Lane were vacant for about three months before another business took them over. As Managing Director Mr Wainwright arranged for all the suppliers, utilities and HMRC to be informed of the change of address, and instructed the company's accountants to have the registered office amended at Companies House. He decided not to ask Royal Mail to direct any post to the Altrincham address, because he thought that was unnecessary.
11. The accountants failed to action his instructions and the registered office remains 78 Water Lane to this day.
12. The claimant underwent early conciliation with the company as the prospective respondent between 28 April and 18 May 2023, but when her claim form was issued on 30 May 2023 she put Mr Wainwright's name in box 2.1 rather than the company.

13. On 14 June 2023 Employment Judge Aspinall directed that the proceedings be sent to the company, and this was done by a letter from the Tribunal of 23 June 2023. The letter attached the claim form, required a response form by 21 July 2023, and gave notice of the hearing on 21 August 2023. It was sent to the company's registered office. Importantly, that letter was not sent by email, only by post.

14. The postal service documents sent out by the Tribunal on 23 June 2023 did not reach the company or Mr Wainwright.

15. On 18 August 2023 Mr Wainwright received a telephone call from a consultancy which represents employers in Employment Tribunal hearings. They told him that his company had a hearing the following Monday. That was news to him. He emailed the Tribunal asking for details.

16. On 21 August 2023 the Tribunal responded by email providing him with a copy of my written decision of 18 August 2023 cancelling the hearing.

17. Mr Wainwright heard nothing further until the Tribunal Judgment was issued on 4 September 2023. That Judgment was sent by post to the registered office for the company, but it was also issued by email to both sides.

18. The reconsideration application was made by email by Mr Wainwright that same day.

The Law

19. The application was made pursuant to rule 70, which permits reconsideration of a judgment "where it is necessary in the interests of justice to do so". The power to reconsider and revoke a judgment must be exercised in accordance with the overriding objective in rule 2, which is to deal with a case fairly and justly.

Claimant's Submission

20. The claimant argued that the judgment should stand, although she accepted that it should be against the company rather than Mr Wainwright personally. The core point that she made with some force was that the notice of claim and requirement to file a response had been sent to the registered office of the company. It was for the company to ensure that the registered office was changed, or that mail was redirected. She said it was not enough for Mr Wainwright simply to notify the company's suppliers and contacts of the change of address.

Respondent's Submission

21. Mr Wainwright submitted that it would still not be fair to allow the judgment to stand. He invited me to conclude that the company had done everything it reasonably could by notifying suppliers and utilities of the change of address. The Employment Tribunal was not an organisation with which the company had had previous contact. The fact the company had moved premises was easily ascertainable from its website, and of course Peninsula had obtained the correct contact details when telephoning about the hearing on 21 August 2023.

Conclusions

22. I considered these competing submissions and the information available to me, and decided that it was in the interests of justice to revoke the judgment.

23. That was not an easy decision. The claimant made a powerful argument that by failing to ensure that its registered office was changed the company had taken the risk of an important communication going unanswered. She was right to say that it had been a mistake by the company not to arrange for mail to be redirected.

24. That said, I was satisfied that Mr Wainwright had given truthful evidence about the company not being aware of the Employment Tribunal claim, and that he had instructed his accountants to change the registered office. It was also clear from the proposed response form that there were some substantial issues between the parties in relation to these claims, and it could not be said that this was a case where the respondent had no valid defence in any event.

25. I therefore decided that the interests of justice meant that the judgment should be revoked and the case listed for a final hearing with directions for case preparation.

26. Having delivered that judgment, the hearing proceeded as one for case management, details of which are contained in the Case Management Order which will be issued separately.

Regional Employment Judge Franey

5 January 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

12 January 2024

FOR THE TRIBUNAL OFFICE

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>