



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Wilson-Greenwood

v

A Catlow Civil Engineering Limited

Before: Employment Judge JM Wade (in chambers)

JUDGMENT

The respondent's application for a reconsideration dated 22 December 2023 is refused, there being no reasonable prospects of the judgment sent to the parties on 11 December 2023 being varied or revoked.

REASONS

1. I gave judgment in the claimant's unlawful deduction from wages complaint in an extempore Judgment on 7 December 2023. An application to reconsider that judgment was received on behalf of the respondent on 22 December 2023. There had been no application for written reasons of the Judgment sent to the parties on 11 December 2023. Rule 62 (3) applies.
2. On seeing the application I directed the reasons be typed to aid my recollection in dealing with the application – for reasons unconnected with the parties that request for typing was delayed but has now been provided to me.
3. The note of those reasons is below – corrected for elegance and error of expression. Memory restored, it is clear the substance of the application is without merit – it was not the difficulty in connection which had prevented the respondent providing evidence in support of its defence, it was its previous failure to comply with orders, and/or give disclosure of documents promised in its defence. That is not corrected in the reconsideration application and in those circumstances there is no prospect of the judgment being varied or revoked.

4. I also observe that resources across the whole of courts and Tribunals are strained, and exercising discretion in favour of a party who fails, without excuse, to comply with orders takes resources away from parties who do comply with them. That is neither in the interests of justice or tax payers. Rule 47 gives the Tribunal the power to proceed in the absence of the parties when it is in the interests of justice to do so – in this case there was not full absence, and transparency and an “equal footing” was maintained.

Note of reasons given extempore on 7 December 2023

5. “This is an unusual situation. Rule 47 does not address remote hearings explicitly – we are faced with a situation where party can see and hear what is going on in this hearing, but is not in full attendance, that is they are not able to participate and say what they might wish to say on this occasion due to, it appears, connection difficulties, albeit we have managed to have a word facilitated by our clerk by telephone.
6. I am therefore going to summarise the proceedings as they are currently.
7. This is a straightforward wages claim for £7375 which it was alleged was payable on 18 July 2023 and it is alleged that payment of that sum in wages was not made by the respondent to the claimant when it was properly payable.
8. ACAS conciliation was commenced on 16 August with a certificate issued on the same day and the claim was presented on 15 September 2023. The claim was presented by solicitors acting on behalf of the claimant and it made a very clear allegation that wages should have been paid of £7375, and were not paid on Tuesday 18 July 2023. The claim was served with standard orders sent on 10 October 2023 as follows:
 - (1) The claimant must by four weeks from the date of the letter provide a document setting out how much you are claiming and how it has calculated. Bearing in mind the clarity in the particulars, that is wages due, at £30 an hour for the hours worked, no further document was required - we already have that clarity.
 - (2) Copies of all supporting documents in evidence.
 - (3) The respondent must by six weeks from the date of the letter send to the claimant copies of all the relevant documents in evidence.
 - (4) The respondent must prepare a file of its own and the claimant’s documents and send a hard copy.
 - (5) The respondent must send the Tribunal by seven days before this hearing (and we are now 7 December so that will have been by 30 November) a hard copy and an electronic copy of the file.
9. There was then the presentation of a paper grounds of resistance response form. That was presented on 7 November 2023 on behalf of the respondent. The respondent’s contact name, number and email, was for Mr Catlow and the defence said this “Mr Greenwood’s money was held back due to several damages he caused whilst working for us. Cost incurred for these from NPG (National Power Grid) will be included in our bundle”. The fact of the withholding of wages was not, therefore, in dispute.

10. Thereafter there was the provision by the claimant of two statements on 30 November 2023. Those statements are from two individuals also saying that they have not been paid wages by the respondent firm. A copy of the contract of employment was also provided by the claimant (between the respondent and the claimant). Further, a copy of a letter of 14 July from the respondent was provided saying: “this letter is to inform you that any invoices owed to yourself are being withheld whilst we investigate the numerous damages caused by yourself to different services. This in line with your contract and signed indemnity. We will inform you in writing of a final deduction amount to recoup our costings from these damages”.
11. There was then a second letter of the same date (disclosure of which I requested from the claimant during this hearing having completed my reading in) in which there is an extract from the contract of employment:

“The employer reserves the right to make deductions from your wage or other sums, due to you at any time throughout your employment and also from any final monies owed on termination of employment, such deductions may be made, for example, in respect of(then there is a long list which is said to be non-exhaustive but the only relevant example is, “any loss to the company which is a result of your failure to follow rules or procedures)”. I cannot see any other particular example or term that would cover what the allegations of “damages” caused by the claimant “to different services”. The contract then provides: you will be notified in advance of any deduction to be made.
12. Then there is set out over the next two pages “please see below the damages from your sites”. Then there is a list of sites – 27 October 2022; 4 January 2021; 27 March 2023; 28 April 2023 and another matter where it was alleged to have been reported on 9 January 2023. There were various amounts including, £2335.01 for gas damage, and so on and taking into account the other sums that are alleged the total of those matters is £4654.92. That is the sums that are itemised and Mr Catlow indicated he would be visiting other sites.
13. These are the documents before me and on the Tribunal’s file.
14. There was further communication on the file on behalf of the claimant to the effect that there had not been a bundle received from Mr Catlow or on behalf of the respondent as ordered.
15. Yesterday an email was sent by a Claire Bellamy on behalf of the respondent saying: “good afternoon, please accept our apologies for this being so late in the day. Would it be possible for us to ask for an adjournment of this case. The member of staff that was dealing with this is off work ill and it is something that we were not aware needed following up. We would very much appreciate it as it would give us time to prepare a bundle.” That was received at 13:38 yesterday and that application was refused with reasons given by the Employment Judge yesterday and the parties were informed at 15:06.
16. It is now 15:02. At 2pm Mr and Mrs Wilson-Greenwood were connected and ready to proceed with the hearing and Mr Catlow, it appears, had recovered and was able and willing to connect to the hearing and indeed he is connected to this hearing as a participant on behalf of the respondent. The difficulty is that he cannot be heard or seen by the Tribunal or by Mr and Mrs Wilson-Greenwood but our clerk has relayed that he can see and hear me and the

claimant and his wife. In the time between 2pm and now, great efforts have been made (such efforts as usually result in the correction of connectivity difficulties) to remedy Mr Catlow's difficulty. It is all the more surprising that the difficulty has not been remedied.

17. This is a short track money claim in the Tribunal. It is a debt claim. It is one in which the fact of the non-payment is accepted, and in which the defence relies upon the contractual terms and alleged failings by the claimant. Those terms were quoted in the letter that was sent to the claimant: the respondent relies on a power to deduct for: "any loss to the company which is as a result of your failure to follow rules or procedures." It was therefore for the respondent to prove such failures to succeed in its defence.
18. I bear in mind that this is a case in which both parties had the opportunity and indeed were ordered to provide the evidence on which they wished to rely. I can observe from the hearing file that the claimant has provided the evidence relevant to his case. Had the respondent complied with orders such that it had provided evidence of failings then I may have had to hear oral evidence today from Mr Wilson-Greenwood, and from Mr Catlow, to discuss that evidence.
19. The parties may have wanted to ask each other questions about the evidence in support of alleged failings. I would have had to note and weigh that evidence.
20. The defence relied upon the contract term and said in terms that "the costs incurred for these from MPG will be included in our bundle". The term relied upon is not simply costs incurred at a particular site or in respect of particular work, but that they can be in some way be attributed within the terms of the contract terms to failings of Mr Wilson-Greenwood. He was entitled to that information immediately the defence was presented in that way.
21. I note there has been absolutely no provision of documentation from the relevant work that would attribute such costs to any conduct on the part of Mr Wilson-Greenwood.
22. In those circumstances the defence would have been bound to fail today, even had a representative of the respondent been able to be heard and seen - unless a second bite at a postponement had been afforded, with relief from the failure to comply with the orders and provide documentary evidence. I make that observation simply on the basis of the documents that are in front of me. These are circumstances in which it is not in the interests of justice for me to hear any oral evidence, because to do so would place the parties on an unequal footing.
23. I cannot see that there is any prejudice to the respondent in giving Judgment for the claimant in the sum alleged. The respondent had had the opportunity to defend the case by providing the evidence in question, having said it would do so, when it presented its response form (on the last day available to present its defence). There was no explanation for its failure to comply with orders, and only a last minute postponement application.
24. I am not going to detain the parties any further. I consider that there has been an opportunity to examine the case on the papers in front of me, and that Judgment on the papers is a proportionate way to proceed in all the rather unusual circumstances of this case.

25. I give Judgment for the sum of £7375. It is a sum unlawfully deducted which I order to be paid gross. It is then a matter for the claimant to account for tax and national insurance in the ordinary way. A declaration is also sought and I give that declaration.
26. The claimant's schedule of loss seeks interest at the court rate, that is not permissible in such a wages claim, unless I am provided with the details of the financial losses - for example if, as a result of the unlawful deduction, a party had incurred a penalty from a bank for late payment or something of that kind.
27. General interest is not awarded under the provisions of the Employment Rights Act Part 1996 Part 2, which is the law applicable to these proceedings. I am therefore not in a position to make that award.
28. It is the case that interest starts to run at the court rate which is 8% from 14 days of the Judgment being sent to the parties. I can see that there has been considerable delay in this case as it stands. I will give Judgment today, and the Tribunal will use all best endeavours to ensure it is sent to the parties without delay. There will be, accompanying that Judgment, all the usual guidance and notes about what the parties can do, or not, in response to that Judgment."

Employment Judge JM Wade

Date 14 February 2024