



EMPLOYMENT TRIBUNALS

Claimant: Mr E Palmer

Respondent: Mitie Limited

JUDGMENT

The claimant's application dated 26/10/2022 for reconsideration of the judgment sent to the parties on 14/10/2022 is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked.

Chronology

2. 6/8/2020 the ET1 was presented, the claimant was unrepresented at this time.
3. 7/10/2020 in its ET3 response the respondent raised the issue of requiring further particulars of the claimant's claim for unauthorised deductions from wages and set out the information which it required. This was served upon the claimant directly on the 30/10/2020.
4. 7/1/2021 the claimant was asked to confirm within 7 days the correct name of his employer. He did not respond.
5. 20/1/2021 the respondent made an application to postpone the hearing listed for the 2/3/2021.
6. 19/2/2021 the respondent's application was granted.
7. 3/3/2021 the Greenwich CAB provided some pay slips for the claimant. The CAB did not comply with Rule 92.
8. 29/3/2021 Mariam Rufai of FRU went on record as the claimant's representative.
9. 11/5/2021 Ms Rufai said she was writing to inform the Tribunal of a change of representative for the *respondent*. She attached a further notice of acting in which she referred to acting for the claimant.

10. 25/1/2022 Abou Kamara from FRU wrote to the Tribunal requesting a new hearing date. The Tribunal responded on the 26/1/2022 to state that the case was in a queue to be listed. Mr Kamara did not comply with Rule 92, although he did copy three other FRU members of staff. THESE EMAILS WERE NOT BEFORE THE JUDGE.
11. 19/5/2022 Ms Rufai of FRU was asked to confirm the correct name of the respondent within 7 days. She did not do so.
12. 11/7/2022 at the respondent's request, a strike warning was issued to the claimant, via Ms Rufai. The respondent notes that it had attempted to contact the claimant's representative on a number of occasions (the last correspondence it received from Ms Rufai/FRU was on 7/9/2021) and to contact him via Acas. There had been no response. The application was copied to Ms Rufai. The claimant had until the 18/7/2022 to respond.
13. 22/9/2022 a strike out Judgment was issued and it was sent to Ms Rufai of FRU on 14/10/2022.
14. 11/10/2022 the claimant emailed the Tribunal to ask for an update and said he had a problem getting a response from his representative. The claimant did not comply with Rule 92.
15. 25/10/2022 the claimant sent a further email. He asked to be sent copies of the emails Ms Rufai sent to the Tribunal. The claimant did not comply with Rule 92.
16. 26/10/2022 Emma Wilkinson of FRU applied for a reconsideration of the strike out Judgment of the 22/9/2022. THIS EMAIL WAS NOT BEFORE THE JUDGE WHEN THE FILE WAS REVIEWED ON THE 31/10/2022.
17. 31/10/2022 EJ Wright directed that the two letters of 29/3/2021 and 11/5/2021 be sent to the claimant. It was noted they were the only two letters from Ms Rufai which were on the file.
18. 23/3/2023 Ms Wilkinson followed up her email of the 26/10/2022.
19. 30/3/2023 the file was again referred to EJ Wright. She referred the administration to her instruction of the 31/10/2022 and asked whether or not that instruction had been actioned. If it had been, she asked the respondent for a response within 7 days.
20. 10/5/2023 the Tribunal wrote to Ms Rufai and the respondent further to EJ Wright's instruction of the 31/10/2022 as apparently the original instruction of 31/10/2022 had not been actioned.
21. 16/5/2023 the respondent understandably queried why it had been sent copies of Ms Rufai's letters of the 29/3/2021 and 11/5/2021.
22. 16/5/2023 Ms Wilkinson sent an email (copied to Ms Rufai) explaining that she was still awaiting a response to her reconsideration application.

23. 23/5/2023 EJ Wright directed the Tribunal to write to the respondent and FRU (sent to Ms Rufai, rather than Ms Wilkinson – it would appear in error) and asked it to respond to the application for reconsideration by the 30/5/2022.
24. 30/5/2023 the respondent objected to the application for reconsideration.
25. 29/6/2023 Ms Wilkinson sent an email to ask that the Tribunal's records be amended to show her acting for the claimant.
26. 23/5/2024 Ms Wilkinson sent an email lodging a formal complaint.

Findings in respect of the reconsideration application

27. The claimant did not respond to the Tribunal's letter of 7/1/2021 within 7 days in respect of a relatively simple matter for him to confirm the correct name of his employer and the request was sent directly to him.
28. Ms Rufai placed herself on record as the claimant's representative on the 29/3/2021 and then again on the 11/5/2021.
29. Mr Kamara wrote to the Tribunal on the 25/1/2022 enquiring about the relisting of the hearing dates. It is incorrect to say Mr Kamara replaced Ms Rufai on the record. He said: 'we are representing Mr Eric Palmer in this case'. He did not proffer himself as a replacement for Ms Rufai and he did not comply with Rule 92. The Tribunal's response to the enquiry was merely an acknowledgement of the email. As Mr Kamara did not comply with Rule 92, the respondent was not copied into the Tribunal's response. The file was not referred to a Judge before the email was acknowledged.
30. A letter was sent to Ms Rufai as the claimant's representative asking for a reply within 7 days on the 19/5/2022. There was no reply.
31. The respondent's strike out application was made on the 31/5/2022 and was correctly copied to Ms Rufai (and one other).
32. The Tribunal's strike out warning was copied to Ms Rufai on the 11/7/2022. Any objection should have been received by the 18/7/2022.
33. The respondent emailed on the 19/7/2022 informing the Tribunal that the claimant had not responded to the strike out warning; again copied to Ms Rufai and in compliance with Rule 92.
34. Internally, a strike out Judgment was prepared, signed by EJ Wright on the 22/9/2022 and promulgated (to Ms Rufai) on the 14/10/2022.
35. The claimant it seems contacted the Tribunal by telephone on the 11/10/2022, whilst he was still represented by Ms Rufai. He referred to difficulties in Ms Rufai responding to him and to her not forwarding relevant information regarding his case to the Tribunal. He referred to having Eric Brown from the Law Centre helping him with his case. It is not clear what, if any, application the claimant was making.

36. Ms Rufai had not removed herself from the record and Mr Brown had not replaced her on the record. In any event, the claimant sent a further email on the 25/10/2022 and he referred to his 'case being closed 15/10/2022 due to non actively pursued'. He requested 'the documents and also the emails [Ms Rufai] sent to the Tribunal. The instruction from EJ Wright on the 31/10/2022 was to send to the claimant the two letters Ms Rufai had sent *directly* to the claimant as per his request.
37. Ms Wilkinson then wrote on the 26/10/2022, confirmed that she now had conduct of the case and applied for a reconsideration.
38. The main thrust of the reconsideration application was that although Ms Rafai had conduct of the case from the end of December 2020, she was no longer 'active' as a 'volunteer representative'. This does not explain why she was copied into Ms Wilkinson's email of the 16/5/2023 when it is stated that she ceased as a volunteer shortly after September 2021. There is a reference to Mr Kamara writing to the Tribunal on the 25/1/2022 to 'place himself on the record', however, Mr Kamara expressly did not do so. It is not for the Tribunal to second-guess who internally at FRU is representing the claimant and it is common for a colleague to make interim enquiries.
39. Ms Wilkinson went onto say that there was no further communication and FRU only became aware of the strike out application in the 20/10/2022 when altered to the same by the Plumstead Community Law Centre. Ms Wilkinson said:
- 'We now understand that emails had been sent to the volunteer Mariam Rufai but had not been reviewed or actioned by her as she is no longer a FRU volunteer. We had not closed her email account, in error.'
40. Notwithstanding: that the claim had been struck out further to the respondent's application of the 31/5/2022; the strike out warning on the 11/9/2022; the respondent's email of the 19/7/2022; and the time lapse between the opportunity to object expiring and the Judgment being promulgated - the case had still not been actively pursued. If FRU had access to Ms Rufai's email account, it would have seen the correspondence and have seen that the reason for the strike out application being successful was that the last contact the respondent had had, was on the 7/9/2021. If indeed, as is now claimed, Mr Kamara was the claimant's representative, he had not, on the claimant's behalf, actively pursued the claim. Had he done so, he could have: followed up his email to the Tribunal of the 25/1/2022 in respect of relisting the hearing which had been postponed on the 20/1/2021 (over a year earlier); and/or contacted the respondent to discuss progressing the case in the period January to May 2022.
41. Notwithstanding any administrative oversight on the part of the Tribunal, the reality is that this case, whether under the conduct of Ms Rufai or Mr Kamara, has not been actively pursued since December 2020 when the Tribunal is told Ms Rufai first started to assist the claimant and certainly not since the 29/3/2021 when Ms Rufai placed herself on the record. Furthermore, certainly not since on the claimant's case, Mr Kamara took over the representation in January 2022. The FRU representatives have

done nothing to actively pursue the claim. The only constructive input has been from the Greenwich CAB.

42. It is not a matter for the Tribunal as to how FRU structures its volunteers or supervises them. It is not for the Tribunal or the respondent to 'guess' which individual is representing the claimant. During the period from when the claim was presented on the 6/8/2020 to the reconsideration application of the 26/10/2022, there was no contact at all from the claimant and two letters putting herself on the record from Ms Rufai and Mr Kamara's enquiry regarding relisting the hearing. Nothing substantive was done to progress the claim in a period of two years and two months. The claim was not therefore actively pursued and as a result, it was struck out further to the respondent's application and the warning given.
43. The respondent in its response to the application has referred to there being no arguable case of a miscarriage of justice; rather the claimant's representative failure has caused the claim to be truck out. It also referred to Outasight VB Ltd v Brown [2015] ICR D11 and to the wording of Rule 70 and to reconsidering any judgement where it is 'necessary in the interests of justice to do so' and quoted 'having regard not only to the interests of the party seeking the review or reconsideration, but also to the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation'.
44. The claimant both when representing himself and when represented had from the 30/10/2020 to answer the respondent's request for more information as to why he contended the was an unauthorised deduction from his pay. The claimant/his representative took no action to provide this information (and it appears still has not done so, despite claiming that Ms Rufai had provided pro bono assistance for the postponed hearing (Ms Wilkinson refers to a postponed hearing in September 2021, however the hearing had been listed for 2/3/2021). This was despite the respondent's application of the 31/5/2022 and the strike out warning of the 11/7/2022.
45. The application for a consideration is therefore refused.

Employment Judge Wright

Date: 3/6/2024