



EMPLOYMENT TRIBUNALS

Claimant: Ms Veronica Ghiurca
Respondent: Garmston Professional Ltd
On: 25 August 2023
Before: Employment Judge Ahmed (sitting alone)
At: Leicester (via CVP)

JUDGMENT ON AN APPLICATION FOR A RECONSIDERATION

The Respondent's application for reconsideration of the decision to issue a Rule 21 Judgment against the Respondent made on 27 February 2023 and sent to the parties on 8 March 2023 is refused.

REASONS

1. In these proceedings the Claimant presented a claim to the Employment Tribunal on 14 October 2022 bringing complaints of pregnancy and maternity discrimination. In her claim form the Claimant said that she was employed by Garmston Professional Ltd (hereinafter the 'First Respondent' or simply the 'Respondent') from 19 February 2022 to 23 June 2022.
2. The Claimant also brought her claim against Jam Staffing Solutions Ltd (hereinafter the 'Second Respondent') who were the recruitment agency that was said to have obtained employment for the Claimant.
3. The Claim was served on both Respondents at the same time. There were two letters (placed in the same envelope) sent to both Respondents on 24 October 2022. The first letter enclosed a copy of the Claim, gave notice of a final hearing and set out standard case management orders. That letter made it clearly that the Respondents had until 21 November 2022 to submit their Response. The second letter gave notice of a Preliminary Hearing to take place by telephone on 25 January 2023.
4. The Second Respondent presented its Response (in time) on 21 November 2022 indicating an intention to defend the proceedings. The First Respondent did not

present its Response until 29 November 2022 and it was thus presented out of time. There was no application for an extension of time submitted with the Response nor was any such application included in the body of the Response.

5. On 18 January 2023 a letter was sent by the Tribunal to the First Respondent as follows:

“Employment Judge Clark has directed that under rule 18 of the above rules [Employment Tribunal Rules of Procedure 2013] the response from Respondent 1. Garmston Professional Ltd must be rejected because it was received more than 28 days after you were sent a copy of the claim and it was not accompanied by and did not include an application to extend time.

A judgment may now be issued and you will only be entitled to participate in any hearing to the extent permitted by the Employment Judge who hears the case.

The accompanying notes ‘Response Rejection – Your Questions Answered’ explain the steps that are not open to you as a result of this rejection.”

6. There was no application to extend time following that letter.

7. A telephone Preliminary Hearing took place on 25 January 2023 before Regional Employment Judge Swann. The Claimant and Second Respondent both joined the hearing. The First Respondent did not join the hearing nor was it represented. The fact that the Response of the First Response was submitted out of time without an application for an extension was dealt with in the written Order sent to the parties. At paragraph 3 of the Order it was explained in detail what the First Respondent needed to do to have their Response accepted. A further telephone Preliminary Hearing was listed for 27 February 2023 at 2.00pm

8. At the preliminary hearing on 27 February 2023 the Second Respondent again failed to join the hearing. The Claim against the First Respondent was withdrawn and dismissed. As the First Respondent had not made any application for an extension of time, a Rule 21 Judgment was issued against them at the hearing on 27 February 2023. The written Judgment was sent to the parties on 8 March 2023.

9. On 21 March 2023 the Respondent herein made an application for a Reconsideration which is the application under consideration today. The grounds of the application were essentially that:

9.1 The Respondent was never given an opportunity to engage in ACAS early conciliation;

9.2 The Respondent was not notified as to the first or second preliminary hearing taking place.

10. On 13 July 2023 the Tribunal sent a notice of a Reconsideration Hearing to take place today.

11. On 18 August 2023 the Respondent submitted written representations. It accepted that it was the Claimant’s employer but denied liability disputing that the Claimant was dismissed by them and denying discrimination of any kind.

12. At this Reconsideration hearing the Respondent did not join the hearing via CVP at 10.00am as listed. The Claimant was represented by Ms Christine Hoey, a Litigation Executive. The clerk of the Tribunal attempted to contact the Respondent

but there was no answer on the only phone number available. At 10.20am the clerk was able to speak to someone who said that Mr Akhtar (who has communicated with the Tribunal on the Respondent's behalf) was not available. A message was left with them by the clerk that the hearing would begin at 10.45am if there was no further contact. At 10.25am a message was received from the Respondent to say that they would not be joining the hearing and instead relied on the written representations sent earlier.

13. Rule 70 of the Employment Tribunal Rules of Procedure 2013 (the "Rules") states:

"A Tribunal may, either on its own initiative...or an application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."

14. Rule 71 of the Rules states:

"Except where an application is made in the course of a hearing, an application shall be presented in writing (and copied to the parties) within 14 days of the date on which the written record, other written communication of the original decision was sent to the parties..."

15. Rule 72 (1) of the Rules provides:

"An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal..."

16. This application for a reconsideration is refused for the following reasons:

16.1 Whether or not active conciliation has taken place is irrelevant – on 3 October 2022 the Claimant has obtained a valid ACAS early conciliation certificate against the Respondent.

16.2 The Respondent has *still* not made an application for an extension of time despite several opportunities to do so;

16.3 I do not accept that the Respondent has not received notice of the first preliminary hearing. Notice of that hearing was sent in the same envelope as a blank Response form which the Respondent *did* receive because it has completed the Response Form and returned it, albeit late.

16.4 The Respondent has failed to engage. It has failed to join two telephone hearings. It has failed to provide an explanation for the (relatively short) delay in submitting its Response despite being told what it needed to do.

16.5 It has been explained to the Respondent what it needs to do to obtain an extension of time yet it has failed to act. Even if the record of the Preliminary Hearings were not received all the relevant information was contained in the Tribunal's letter dated 18 January 2023. I note the Respondent does not dispute receiving the letter sent by the Tribunal on 18 January 2023.

17. For those reasons it is not in the interests of justice to revoke the original decision to issue a Rule 21 judgment. There is no reasonable prospect of the original decision being varied or revoked.

18. The application for a reconsideration is refused.

Employment Judge Ahmed

Date: 31 August 2023

JUDGMENT SENT TO THE PARTIES ON
30th October 2023

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FOR THE TRIBUNAL OFFICE

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