



EMPLOYMENT TRIBUNALS

Claimant: Mr L Matthews

Respondent: Oak Designs Co. Ltd

UPON APPLICATION made by email dated 26 April 2024 under rule 71 Employment Tribunals Rules of Procedure 2013 (the “ET Rules”) to reconsider the judgment sent to the parties on 18 April 2024 (the “Judgment”), and without a hearing:

JUDGMENT

1. The Judgment is revoked.
2. The response filed on 15 May 2024 has been accepted.
3. The claim shall be listed for a 1-day Final Hearing on a date to be notified. Standard case management directions will be sent with the Notice of Hearing.
4. The respondent shall within 7 days of receiving this judgment notify the Employment Appeal Tribunal of it and that their appeal is now moot.

REASONS

Background

1. On 15 April 2024 I considered the file in this case. It had been referred for judicial consideration because the ET1 claim form had been served on the respondent on 15 February 2024 but no response had been received within the 28 day time limit provided for in Rule 16 of the ET Rules. I was satisfied on the available material that (i) the ET1 claim form had been sent to the correct address of the respondent and (ii) I could properly make a determination of the claim. Accordingly, I issued a judgment under Rule 21 of the ET Rules in favour of the claimant on liability and remedy. The Judgment was sent to the parties on 18 April 2024.
2. The respondent applied by an email dated 26 April 2024 for reconsideration of the judgment. I am aware that, in parallel, the respondent has filed a Notice of Appeal at the Employment Appeal Tribunal. The respondent also prepared an ET3 response without sight of the ET1 claim form, responding to what it believed (based on the Judgment and discussions through ACAS) the claimant was arguing for.

3. Having initially considered the reconsideration application, I directed that the ET1 claim form be re-sent to the respondent by email so that the respondent could revise its draft response with sight of it, and I could then determine the application for reconsideration and a request for an extension of time for the response with sight of a 'proper' response. I also invited the claimant to provide his comments on the application, and the parties' views on whether a hearing was necessary. My directions were sent to the parties on 8 May 2024.
4. The respondent provided its new draft ET3 response and application for extension of time on 15 May 2024. The claimant provided comments on 20 May 2024. Neither requested a hearing and I am satisfied it is in the interests of justice to determine the applications on the papers.

Discussion

5. Rule 70 of the ET Rules allows a Tribunal to reconsider any judgment where it is necessary in the interests of justice to do so. Rule 20 of the ET Rules permits an extension of time to be granted for the presentation of a response, at the absolute discretion of the Tribunal; however, the overriding objective to deal with cases 'fairly and justly' (Rule 2) carries significant weight in a tribunal's exercise of this discretion.
6. I am satisfied that it is necessary in the interests of justice to reconsider the Judgment. The respondent asserts that it did not receive the ET1 claim form. I have some doubts as to the explanations that the respondent provided in the email of 26 April 2024, but I am satisfied based on all of the correspondence that, had the ET1 been received, it would have been responded to. On the balance of probabilities, I think it is likely that due to issues with the post, the respondent did not receive the ET1 claim form.
7. Had I known on 15 April 2024 that the respondent had not received the ET1 claim form, I would not have issued the Judgment. In those circumstances, and taking due account of the impact this will have on the claimant, I am nonetheless satisfied that the right thing to do is to revoke the Judgment.
8. The respondent was provided with a copy of the ET1 claim form on 8 May 2024 and has filed a draft response on 15 May 2024 together with an application for an extension of time. I am satisfied that the defences raised in the ET3 response are arguable. A good explanation for the lateness of the response – that, as I have accepted, the ET1 claim form was not received – has been provided. It is fair and just to grant an extension of time for the response to 15 May 2024, and I shall do so.
9. The claim raises issues of:
 - a. whether a redundancy payment is due (which, it seems to me, will depend on whether s.140(1) of the Employment Rights Act 1996 applies and thus the question of whether the claimant had, in fact, committed gross misconduct);
 - b. whether any notice pay is outstanding and, if so, how much; and
 - c. whether there is any outstanding holiday pay and, if so, how much.

10. In view of the factual dispute under the first issue, a 2-hour Final Hearing will not, in my view, be sufficient. I will direct that the case be listed for a 1-day Final Hearing instead. A Notice of Hearing and standard case management directions will follow.
11. Noting that the parties are both unrepresented, I annex to this judgment a list of sources of guidance that may assist them in the progression of this case.

Employment Judge Abbott
Date: 7 June 2024