EMPLOYMENT TRIBUNALS

Claimant: Mrs S Hodgson
Respondent: South Elmsall Community Facilities Ltd

Heard: by CVP

On: 25 June 2024

Before: Employment Judge Ayre

Representation

Claimant: Mr S Roxborough, counsel
Respondent: Ms A Bibia, Senior Litigation Consultant

RECONSIDERATION JUDGMENT

The respondent's application for reconsideration of the Judgment sent to the parties on 11 March 2024 and the corrected Judgment sent to the parties on 28 March 2024 fails. The original judgments are confirmed.

REASONS

Background

1. At a hearing on 26 February 2024, which the respondent did not attend, the Tribunal found that the claims for unfair and wrongful dismissal were well founded and ordered the respondent to pay the sum of £17,918.57 to the claimant. A written judgment was sent to the parties on 11 March 2024, and a corrected judgment, in which the spelling of the claimant's name was amended, was sent to the parties on 28 March 2024.

2. By letter dated 5 April 2024 the respondent wrote to the Tribunal asking that the

Tribunal reconsider and set aside the judgment. The grounds for the application as set out in the letter are that:

- The Tribunal has sent documents about the claim to a residential address rather than the respondent's registered place of business;
- Solicitors for the claimant did not make reasonable endeavours to notify the respondent that a claim had been made;
- It would be in the interest of justice and in accordance with the overriding objective to set aside the judgment ;
- The respondent did not have notice of the claim

3. On 12 April 2024 the claimant's solicitors wrote to the Tribunal objecting to the application and asking that it be dismissed or a hearing listed to determine the application. The claimant's objections to the application, as set out in the letter, were in summary that:

    - The respondent's explanation for not engaging with or responding to this claim does not hold up to further scrutiny;
    - The claim was issued and served on the respondent's registered address (as listed on Companies House);
    - The address in question is the published address for various organisations;
    - The claimant was told by an employee of the respondent that the respondent was aware of the judgment earlier than suggested by the respondent, and the respondent's registered address was changed on that date;

4. Having considered the representations of both parties, I decided that this case should be listed for a hearing to consider the respondent's application. The parties were informed that they may wish to adduce evidence at the hearing of the matters contained in the application.

The hearing

5. Both parties attended the hearing and were represented. I heard evidence from Clare Baxter, the respondent's company secretary, who had prepared a witness statement to which was exhibited an extract from the electoral register of Wakefield Metropolitan District Council. I also heard evidence from the claimant, who was given leave to give evidence without a witness statement, and submissions from both parties.

Findings of fact

6. The respondent is a limited company that was incorporated on 5 November 2012. From the date it was incorporated, until 27 March 2024, its registered office was 122 Westfield Lane, South Elmsall, Pontefract, West Yorkshire, WF9 2EF. On 27 March

2024 its registered office changed to Westfield Centre, Westfield Lane, South Elmsall, Pontefract, West Yorkshire, WF9 2PU. The Westfield Centre is very close to 122 Westfield Lane.

7. The respondent was originally based at 122 Westfield Lane. In 2019 however following a housing development on Westfield Lane, 122 Westfield Lane became a residential property, and the respondent moved in to the Westfield Centre. It did not change its registered office however until March 2024, some five years later.

8. Clare Louise Baxter is the Company Secretary and has been the Company Secretary since the respondent was incorporated. She is also involved in the day to day running of the respondent. Ms Baxter's home address is listed on the Companies House website. She lives next door to the claimant.

9. On 28 July 2023 the claimant began ACAS Early Conciliation. The Early Conciliation Certificate records the address of the prospective respondent as being 122 Westfield Lane, which was at the time the respondent's registered office. The claimant was initially represented by a trade union representative from Unison, and subsequently by Thompsons solicitors.

10. The trade union representative began early conciliation on the claimant's behalf and told the claimant that she had asked ACAS to contact the respondent by writing to Clare Baxter at her home address. The representative also told the claimant that ACAS had told her (the representative) that they had written to Clare Baxter and had not received any response.

11. Ms Baxter told the Tribunal that she had not received any communication from ACAS, and I accept her evidence on that point. The claimant did not take any steps personally to alert Ms Baxter to the claim because she believed her trade union and solicitors were dealing with the matter and was not aware until the hearing on 26 February that the respondent had not filed a response to the claim.

12. Prior to issuing this claim the claimant's trade union representative told the respondent that the claimant was considering issuing proceedings in the Employment Tribunal. Specifically, the representative told Mr Tulley, the appeal hearer, during the appeal hearing.

13. After the appeal hearing but before the claim was issued, the trade union representative sent an email to Mr Tulley asking for contact details for the respondent. She stated that she was trying to find an email address and telephone number for the respondent but, having looked on Companies House and on the respondent's corporate headed notepaper, was unable to find either. She also wrote that she was instructed to issue legal proceedings against the respondent on behalf of the claimant, and asked Mr Tulley to get in contact if the respondent had a preference as to which contact details they wanted to be used.

14. Mr Tulley did not respond to this email. When issuing the claim therefore, the claimant's representative used the respondent's registered office.

15. By letter dated 6 November 2023 the claim was served on the respondent at the address that was, at the time, the registered office: 122 Westfield Lane, Pontefract, West Yorkshire, WF9 2EF.

16. The deadline for filing the response was 4 December 2023. The respondent did not file a response. The Tribunal wrote again to the respondent on 8 January 2024 informing the respondent that in accordance with Rule 21 of the Employment Tribunal Rules of Procedure, because the respondent has not entered a response, the respondent may only participate in any hearing to the extent permitted by the Employment Judge who hears the case. That letter was also sent to the address which was the respondent's registered office at the time.

17. The respondent did not attend the hearing on 26 February 2024. A search of Companies House that day revealed an entry for a company named South Elmsall Community Facilities Ltd, company number 08280942, with a registered office at 122 Westfield Lane, South Elmsall, Pontefract, West Yorkshire, WF9 2EF. The company appeared to be active and the nature of the business was stated as being 'combined facilities support activities'.

18. In her evidence to the Tribunal Ms Baxter said that she had talked to the resident of 122 Westfield Lane, who had told her that correspondence from the Tribunal had gone to the address, and that she had returned the mail to the post office with a note stating, "not at this address". There was no evidence on the Tribunal file however of the correspondence having been returned to the Tribunal, as would normally be the case where mail is returned to the post office.

19. Although the claimant's representative had written to Mr Tulley indicating that the claimant was intending to issue proceedings, the respondent did not become aware of the actual proceedings until some time in March 2024 when they were contacted by Peninsula Business Services.

20. After being told by Peninsula that there was a judgment against the company, the respondent changed its registered office on 27 March 2024.

21. On 8 April 2024 Peninsula applied for reconsideration of the Judgment sent to the parties on 28 March 2024. Attached to the application for reconsideration were a short witness statement by Clare Baxter and an extract of the Wakefield Metropolitan District Council electoral register.

22. The respondent has not filed a response to the claim, nor applied for an extension of time to do so. There was no evidence before me today as to what the respondent's potential response to the claim would be.

The Law

23. Rule 70 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("**the Rules**") provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original judgment may be confirmed, varied, or revoked.

24. Rule 71 of the Rules provides that applications for reconsideration shall be made either in the hearing itself or, in writing, within 14 days of the date on which the judgment is sent to the parties. The claimant's application for reconsideration was made in time.

25. Rule 72 of the Rules contains the process that must be followed when an application for reconsideration is made. The first stage is for the Employment Judge to consider the application and decide whether there are reasonable prospects of the judgment being varied or revoked. If the Employment Judge considers that there are no reasonable prospects of the judgment being varied or revoked, then the application shall be refused.

26. If the application is not refused at the first stage, then Rule 72(2) provides that "*the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*"

27. A judgment can only be reconsidered if it is in the interests of justice to do so.

28. When dealing with applications for reconsideration, the Employment Judge should take into account the following principles laid down by the higher courts:

- There is an underlying public policy interest in the finality of litigation, and reconsiderations should therefore be the exception to the general rule that Employment Tribunal decisions should not be reopened and relitigated. Finality in litigation is central to the interests of justice (***Ebury Partners Ltd v Acton Davis 2023 EAT 40***);

- The Tribunal must seek to give effect to the overriding objective of dealing with cases fairly and justly, which includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense; and

- The interests of both parties should be taken into account when deciding whether it is in the interests of justice to reconsider the judgment. The Tribunal must weigh the injustice to the respondent of refusing the reconsideration against the injustice to the claimant if reconsideration is granted (**Phipps v Priory Education Services Ltd [2023] EWCA Civ 652**)

29. Under the Employment Tribunals Rules of Procedure 2004 (SI 2004/1861) ("**the 2004 Rules**") which predated and were replaced by the current Rules, one of the grounds upon which a decision could be reviewed was that "*a party did not receive notice of the proceedings leading to the decision*" and another is that "*the decision was made in the absence of a party*". In ***Outasight VB Ltd v Brown UKEAT/0253/14*** the then Judge Eady QC, now President of the EAT, held that:

"*I start with the question of the ET's approach; whether the different structure of the 2013 rules meant that it was entitled to depart from the approach laid down under the 2004 Rules (and previously). It is right that the Rules are now differently structured. In particular, the specified grounds for review, previously listed, have ben replaced by the simple provision that a reconsideration might take place in the interest of justice. I do not, however, see that as a significant departure. The same basic principles will apply. The specified categories under r34(3) of the 2004 rules could be seen as particular instances when the interest of justice would generally have required a review. If a party is not heard because the Notice of Hearing was not received, it is easy to see why it would be in the interests of justice to review the ET's decision. That said, the specified ground would not give an automatic right. If the Notice of Hearing was not received because of some culpable default by the party concerned, it might well not provide a sound basis for a review; it would not be in the interests of justice to allow a case to be reopened on that basis.*"

30. The focus of the Tribunal's consideration should be on where the interests of justice lie, and whether the party seeking the reconsideration has had a fair opportunity to be heard.

Conclusions

31. The respondent submits that it would be in the interests of justice for the judgment to be set aside because the respondent has not had notification of the claim and should have the opportunity to respond to the case.

32. Whilst I accept that, in principle, this could be grounds for setting aside the judgment, I have considered the comments in ***Outasight*** that if the Notice of Hearing is not received because of a culpable default by a party, that might not be grounds for reconsidering the judgment.

33. In the present case, the respondent finds itself in the position it does solely as a result of its own default. That default is significant. A company is required to ensure that correct records are maintained at Companies House. It did not do so. It moved out of 122 Westfield Lane in 2019 but did not change its registered office until approximately 5 years' later. No explanation has been provided for this default, other than that it was an 'oversight'.

34. The claimant's representative took reasonable steps to try and find an email address and telephone number for the respondent, by putting Mr Tulley, the appeal hearer, on notice that a claim was to be issued and asking for contact details. Mr Tulley failed to respond. As a result the claimant's representatives issued proceedings against the respondent at the registered office stated on Companies House. This was an entirely appropriate step to take. Legal proceedings against a limited company should normally be served on the company's registered office, and in this case they were.

35. Ms Bibia submitted that the claimant could easily have provided a copy of the documents to Ms Baxter, her next door neighbour, once she became aware that no response had been received. I am not persuaded by this submission. The claimant

did not become aware that no response had been received until the date of the hearing in February 2024 and she reasonably believed that her trade union representative and solicitors were dealing with the claim.

36. The fault in this case lies entirely with the respondent and its failure to change the registered office on Companies House and to respond to the email sent by Unison to Mr Tulley asking for contact details.

37. Despite having become aware of this claim in March 2024, and now being represented, the respondent still has not, as at the date of today's hearing, given any indication as to what its potential defence of the claim would be. The respondent has not filed a response to the claim, nor has it applied for an extension of time to do so. As a result, there is no evidence before me today upon which I could form a view as to the potential merits of the response to the claim.

38. In contrast, on 26 February 2024, I was satisfied, on the evidence before me, that the claimant had been both unfairly and wrongfully dismissed. There is nothing before me today to suggest that my decision on the merits of the claim was incorrect. The claimant attended the hearing in February and had prepared for the hearing by producing a witness statement and a bundle of documents.

39. In considering where the interests of justice lie, I have to take account not just of the respondent's interests, and the injustice to the respondent of refusing the application, but also of the claimant's interests, and the injustice to the claimant of allowing the application.

40. The claimant and her representatives have acted entirely appropriately and reasonably in their conduct of the proceedings. If I were to allow the application and set aside the judgment that was reached on the evidence on 26 February, the claimant would be deprived of the benefit of that judgment, and the proceedings would, in effect, have to start again. It is likely that there would be a further final hearing, which would inevitably take place months after the original one, when memories will have faded even more. There is a strong public interest in the finality of litigation, and a public interest in ensuring that records at Companies House are accurate.

41. Whilst I recognise that refusing the application will deprive the respondent of the opportunity of responding to the claim, the respondent only has itself to blame for the current situation. If it had acted properly and updated the records at Companies House, and had Mr Tulley responded to Unison's email, it would not be in the position that it is currently. It cannot be in the interests of justice to deprive the claimant of a judgment in her favour because of the serious default of the respondent.

42. For these reasons the application for reconsideration fails and the original judgment is confirmed.

Employment Judge Ayre
Date: 25 June 2024

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