EMPLOYMENT TRIBUNALS

Claimant: Mr A Walder

Respondent: Mr J Edwards

JUDGMENT

The application for reconsideration of the rule 21 judgment is refused. The original decision is confirmed.

REASONS

1. Following a hearing on 26 April 2024, on 20 May 2024 I issued a judgment and written reasons which were sent to the parties on 12 June 2024 ("the judgment"). The judgment, issued under rule 21, found that the claim for unfair dismissal was well-founded. Remedy was to be determined at a hearing later fixed for 1 August 2024. I need not repeat here the reasons that I gave, but in short it appeared to me that the respondent had not engaged at all the case – no response had been received and the respondent had not attended the hearing.

2. The claim form was sent on 23 October 2023 to the respondent at the farm where the claimant says he worked and which was the address on the ACAS early conciliation certificate. A response was required by 20 November 2023. The judgment and other correspondence from the Tribunal were sent to the same address.

3. By letter of 23 July 2024 ("the first letter") the respondent's solicitor applied for a reconsideration of the judgment. The solicitors say that they were recently instructed by the respondent and refer to the respondent having received notice of the August remedy hearing. That notice was sent on 26 June. The respondent, the letter says, had received the claim when it was delivered to him in London by the housekeeper at the farm, which the claimant (I assume that should be the respondent) visits infrequently. The infrequency of the respondent's visits does not appear to be relevant, at least at the stage of receipt of the claim, since the letter then goes on to assert that the respondent sent the response to the Tribunal (by post, it is implied) in time for the Tribunal to receive it within the 28 day time limit set by rule 16. The letter then asserts

that the respondent has a reasonable prospect of successfully defending the claim and sets out reasons which I accept would afford the respondent that prospect – in short the respondent says there was a genuine redundancy situation and the claimant was consulted. The letter then gives further detail in response to an apparent claim for discrimination, the basis of which is not clear to me from the claim form. It is further submitted on behalf of the respondent that the judgment should be revoked and that time should be allowed for him to submit a further response. No draft further response is included, as the respondent's solicitors should have been aware it should have been, under rule 20. The letter requests that the claim be treated as having been sent to the respondent from the date of any revocation of the judgment, despite it not being in dispute that the claimant been received by the response well before that. Should reconsideration not be granted the first letter sought, in the alternative, a postponement of the remedy hearing.

4. Although I do not have a copy of the orders, it is evident that my colleague Employment Judge ("EJ") Michell considered and refused the application for a postponement of the remedy hearing. The respondent's letter of 31 July 2024 ("the second letter") is a response to that. EJ Michell had evidently raised the following four points which I record in italics, with a summary of the respondent's response in normal text. My own observations are in square brackets:
    a. *The respondent did not explain in the first letter when he received the claim or posted it to the Employment Tribunal.* The respondent had problems in his personal life and difficulties with his mental health in late 2023/early 2024. He had no record or recollection of when he received the claim or posted his response. He was however certain that he did so in compliance with the time limit imposed by the Tribunal. [This position is consistent with the position as set out in the first letter.]
    b. *The first letter does not attach a copy of the response or grounds of resistance*. The respondent wrote his response by hand and did not take a copy. A further response could be prepared and submitted. [I note at this point that it is surprising to say the least that the respondent's representatives still do not seem to have taken what is rather more than a hint that they should provide such a draft.]
    c. *The first letter does not explain why the respondent did not attend the preliminary hearing on 26 April.* The respondent asserts that he did not receive a notice of hearing and points out that since the claimant too did not attend the hearing, perhaps neither received it.
    d. *The first letter does not explain why the respondent did not respond to correspondence from the Tribunal e.g. on 29 February.* The respondent had been emailed a copy of the Tribunal's file on 30 July 2024; having looked at it, the respondent asserted that he had only received the claim form and accompanying documents and the notice of the remedy hearing (dated 26 June 2024). On receipt of that in late June he instructed his solicitors in July 2024. [On 29 February the Tribunal wrote to say that as no response had been received a judgment might be issued under rule 21. The notice of hearing for the 26 April hearing was sent the same day so I assume they were sent together. By implication the respondent is saying he did not receive the judgment, though it might have been helpful had the solicitors said that explicitly on his behalf.]

5. On 6 August (I was away at the time) my colleague EJ Bansal considered the application for reconsideration and ordered that it be referred to me under rule 72(3) for a determination of the reconsideration on the basis only of the written representations made by the respondent in the letters of 23 and 31 July 2024; the respondent was not to submit any further representations unless ordered to do so. In the meantime the remedy hearing was adjourned. The case was referred to me in late August without the respondent's letter of 31 July 2024 which EJ Bansal said I was to consider. I therefore asked for a copy of that letter and the case has now come back to me.

6. Rule 70 says:

> A Tribunal may… 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.

7. Rule 71 requires that an application for reconsideration be presented within 14 days of when the original decision was sent to the parties. Clearly it is not possible to comply with that deadline if the decision is not received. On the respondent's case the trigger for the application was the notice of remedy hearing, sent out on 26 June 2024. The application for reconsideration was sent as I have said on 23 July 2024. It was therefore late whether one applies the letter or the spirit of rule 71. No explanation for that delay is provided in either of the letters, though it may of course have taken some time for the respondent to have instructed his solicitors.

8. If what the respondent says is right, he has been failed by the postal system three times. First when he sent his response (around November 2023), second when the notice of hearing for the April hearing was sent to him (on 29 February 2024) and third when the judgment and reasons were sent to him (on 12 June 2024). I consider this to be unlikely and think it more likely that the respondent simply did not pay proper heed to the claim until he instructed solicitors in July. The respondent accepts he was aware of a claim before 20 November 2023 and knew that the Tribunal was contacting him at the farm address – I do not know, because the application does not say, whether the respondent says that when he posted his response he indicated that a different address should be used for correspondence. On the respondent's case, after posting his response in November he appears to have done nothing until receiving correspondence seven months later (26 June). Even someone with a working knowledge of the delays which sometimes occur in the Employment Tribunal system should in my judgement have made enquiries before then if they had heard nothing. The respondent has even now failed to provide a draft response.

9. I therefore consider that there are not sufficient grounds to revoke or retake the decision I made in April. It was made on the basis of the respondent's failure to participate and I remain of the view that the respondent failed to participate at the material time. No good or sufficient reasons have been presented to me for this. I would have come to the same decision even had the application for reconsideration been presented within 14 days of when the respondent says he received the notice of remedy hearing.

10. The case will now be relisted for a remedy hearing. In the circumstances I direct that the respondent may participate in the hearing. I conclude with the following. When the judgment was sent out on 12 June I included directions that the claimant should provide certain information relevant to remedy at least seven days before the remedy hearing, or his claim might be struck out because it had not been actively pursued. It appears that the required information has not been provided by the claimant and so that is something I or another judge will have to consider at the remedy hearing.

Employment Judge Dick

18 October 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

28 October 2024

FOR THE TRIBUNAL OFFICE