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EMPLOYMENT TRIBUNALS

Claimants: 1. Miss A Higgins
2. Mrs V Beckinsale

Respondent: Raja Care Homes Limited

Heard at: East London Hearing Centre

On: 27 June 2018

Before: Employment Judge Brown

Representation

Claimants: In person

Respondent: Mr S Jagpal (Consultant)

JUDGMENT

The judgment of the Tribunal is that the Tribunal does not reconsider the judgments in this case. It is not in the interests of justice to do so.

REASONS

1 The Respondent makes application to reconsider the judgments giving at a hearing on 5 March 2018. The background is as follows.

2 On 6 December 2017 the Claimants presented claims to the Employment Tribunal for redundancy payments and notice pay. They had undergone Early Conciliation through ACAS between 25 October 2017 and 25 November 2017. In their claims, the Claimants said that they had been employed as night carers at the Respondent's Care Home. They said that, at a staff meeting in August 2017, Dr Shams Tabraiz, Owner, told staff that the CQC would not be renewing the Home's registration. They said that all staff agreed to stay until the final decision was made. The Claimants said that, then, on 11 September 2017, they had been told to go home as the Home was closing, that the manager had telephoned the owner to say that staff were in the building and that the owner had replied, saying that staff would be paid, including redundancy.

3 On 12 December 2017 the Employment Tribunal sent a Notice of Claim to the Respondent at its address at 10 Connaught Gardens East, Clacton-on-Sea, CO15 6HY, saying that the Respondent should present a Response by 12 January 2018 if it wished to defend the claims and giving notice of the Hearing on 5 March 2018. That Notice was not returned undelivered, but no Response was received by the Employment Tribunal.

4 On 25 January 2018, Shams Tabraiz, Director of the Respondent, emailed the Tribunal asking for the Tribunal to send the ET1, Notice of Claim and Notice of Hearing for the Claimants' claims and two others.

5 On 2 February 2018 the Tribunal responded saying, "You did not present a response to the claim. The time limit for responding to Ms Higgings' claim has now expired. This was served on you by post on 15 December 2017. You will need to seek advice on your position."

6 On 16 February 2018 Mr Tabraiz forwarded his 25 January 2018 email to the Tribunal and said that he had not received a reply to it.

7 On 5 March 2018 the Claimants attended the Final Hearing listed in their claims. I heard the claims and decided that the Respondent had been correctly served, but had not entered a Response. I accepted the Claimants evidence, made findings and gave judgment for the Claimants in their redundancy and notice pay claims.

8 On 12 March 2018 the Tribunal sent the judgments to the Respondent at the same address, 10 Connaught Gardens East, Clacton-on-Sea, CO15 6HY.

9 On 20 March 2018 the Respondent sent two reconsideration applications to the Tribunal in respect of the Claimants' judgments. The applications said that the Respondent was unaware of the Tribunal's correspondence of 2 February 2018 and had not received a response to its email of 16 February 2018. The Respondent said that the interests of justice required that the judgments be set aside.

10 On 20 April 2018 the Tribunal replied, saying that the application had been refused by me and that there was no reasonable prospect of the original decision being varied or revoked. The reasons given were that the judgment had been correctly awarded and that the Tribunal had sent all appropriate correspondence to the Respondent at its address, but none was returned undelivered. The Tribunal said that the Respondent was served, but failed to attend the hearing or enter a Response.

11 On 23 April 2018 the Respondent wrote once more, saying that the Respondent had not received correspondence from the Tribunal and there was no proof of service from the Tribunal.

12 On 5 May 2018 the Tribunal replied again, saying that the reasons for refusal of reconsideration had already been given and the Respondent had still not prepared a draft Response suggesting any substantive grounds for defending the claim.

13 On 14 May 2018 the Respondent wrote further to the Tribunal, enclosing Responses and saying that notice pay should not be awarded gross. The Responses said

that, on 19 August 2017, the Claimants telephoned Mr Shams Tabraiz, giving one month's notice and that the Claimants were therefore not entitled to be paid, either notice or redundancy pay.

14 I listed a reconsideration hearing. Mr Rambojun, a Co-Director of the Respondent attended to give evidence. The Claimants also attended and brought some documents.

15 In Mr Rombojun's witness statement, he said that the Respondent had not received, either the Notice of Claim, or the Tribunal letter of 2 February, and no correspondence from the Tribunal until judgment. However, in oral evidence, Mr Rambojun was admirably honest and candid and told me that he did not deal with paper work for the Respondent at all, other than collecting posts from 10 Connaught Gardens East and sending it on to Mr Tabraiz. Mr Rambojun did not say that he opened letters received, simply that he sent the letters on. In those circumstances, I concluded that Mr Rambojun did not know and could not know whether the Tribunal correspondence had, in fact, been received. He would not know unless he had opened and read the post and dealt with it himself. Given that two letters were sent by the Tribunal to the Respondent's address and neither was returned undelivered, but, on the other hand, judgment was received at exactly the same address, I concluded that the Respondent did receive the Notice of Claim in the case and the Tribunal's letter of 2 February 2018. I concluded that the Respondent simply chose not to defend the claim, or to attend the hearing on 5 March 2018.

16 By *Rule 70 Employment Tribunal Rules of Procedure 2013* the Tribunal may either, on its own initiative, or on the 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.

17 I have concluded that, in the circumstances of this case, there was no good reason for setting aside the judgment. While the Respondent had eventually defended the claim after judgment had been given, saying that the Claimants resigned before the closure of the home on 11 September 2017, I considered that that defence was highly improbable. It was not in dispute that the Home in question was at risk of closure and, therefore, that the employees were at risk of being made redundant, but that the Claimants were still in employment on 11 September, when the Home closed. It was inherently unlikely, in my view, that the employees, would have resigned with notice and abandoned their rights to the redundancy pay and notice pay to which they would have otherwise been entitled, but nevertheless still be working right up until the day of closure. Furthermore, contemporaneous documents shown to me by the Claimants today and admitted by Mr Rambojun in evidence, show that Mr Rambojun and Mr Tabraiz agreed that the Claimants were redundant and were entitled to notice pay at the time the Home was closed.

18 I did not consider that there would be any injustice to the Respondent in refusing to reconsider a judgment which had been given at a hearing which the Respondent chose not to attend and in circumstances where the putative defence to the claims was inherently unlikely.

19 I make clear that, with regard to the notice pay, the Respondent should pay the

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Claimants the net notice pay which the Claimants should have received, having deducted tax from the gross award made in the judgment.

Employment Judge Brown

2 July 2018