



EMPLOYMENT TRIBUNALS

Claimant: Mr A Brennan

Respondent: Elite Linen Textile Services Ltd.

DECISION ON APPLICATION FOR RECONSIDERATION OF DEFAULT JUDGMENT DATED 30 MAY 2022 (Rules 70-74 Employment Tribunal Rules)

1. The default judgment dated 30 May 2022 is hereby **REVOKED**.

REASONS

1. The Respondent's representative, Mr Martin Bradley, makes an application by email dated 21 June 2022 for a reconsideration of my judgment dated 30 May 2022. It is unclear whether the Respondent has taken proper steps to copy the Claimant into this communication of 21 June 2022 or into previous correspondence as it is required to do by Rule 92.
2. Mr Bradley is a Director of the Respondent and its appointed representative. He now requests all communication by post to be directed to his personal address in Harrogate, North Yorkshire. The Respondent however has a trading address at Poulton le Fylde, Lancashire which is where the Claimant worked for a short period. The Respondent has its registered office at Cotton's Lane E2 in East London. The Claimant has never worked or resided in East London.
3. The Claimant issued his Claim for unpaid wages and disability discrimination including victimisation against the Respondent on an ET1 form lodged on 4 October 2021 and gave the Respondent's company registered office as the address for service. Mr Bradley states that this address is 'unmanned' and the Respondent and its staff and directors have 'no access to that address'. The Respondent says that it did not therefore learn of the claim against it until Mr Bradley was contacted by ACAS on or around 8 April 2022 whereupon he asked the tribunal for further assistance to bring the Respondent's defence out of time.
4. Following correspondence with the Tribunal the Respondent eventually sent a form of draft response in an undated letter accompanied by witness statements (which are dated 24 May 2022) on 26 May 2022. Mr Bradley provided the brief

explanation for delay which is that the ET1 had originally been sent to the address of the registered office and not received.

5. Mr Bradley has throughout been anxious to stress that he is frequently out of the country in Spain on holiday due to his upcoming retirement and relocation. So, for example, he was away from 18 October to 5 March 2022 and was in Spain with an unreliable signal on the date of the latest hearing on 30 May 2022. I am satisfied that he made insufficient attempt to ensure that he was able to participate in formal judicial proceedings of which the Respondent had prior notice.
6. I do not accept that there was no other person in the UK and/or with access to reliable communication channels who could have acted on behalf of the Respondent which is a limited company. The Tribunal has been sent draft witness statements dated 24 May 2022 from four employees, some of which appear to have managerial status, who work at the Poulton le Fylde site and who clearly have knowledge of the detail and circumstances of the Claimant's short employment history with the Respondent. There is no reason why one of those staff could not have corresponded effectively and promptly with the Tribunal and with the Claimant if Mr Bradley was unavailable abroad. This comment should be borne in mind for future hearings.
7. The Respondent did not attend and was not represented at the telephone hearing on 30 May 2022 despite several attempts to contact Mr Bradley.
8. In the absence of the Respondent and in all the circumstances I made a default judgment in the Claimant's favour with the decision on remedy listed for a separate hearing by video (CVP) on 8 July 2022.
9. The Tribunal's letter of 16 June 2022 following the 30 May 2022 hearing was not sent by me but by a different judge, Employment Judge Russell, who directed the Respondent to make a formal written application for permission to file its Response out of time and to provide an explanation as to why its Response is late. I have reiterated that instruction and directed the Respondent by letter dated 27 June 2022 to complete and lodge an ET3 Response form. There is no ET3 on the file and none has yet been received. The requirement for an ET3 is set out in Rule 16 Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 which requires the response to be on a prescribed form. Rule 20 requires an application for an extension of time for presenting a response to be in writing and copied to the Claimant. This was only done on 21 June 2022 and it is unclear whether a copy was sent to the Claimant and no prescribed ET3 form has apparently been filed.
10. Nevertheless in the Respondent's letter of 21 June 2022 Mr Bradley does clearly explain the reason for the late response and sends further copies of the draft defence and witness statements (dated 26 May 2022) which identify the nature of the Respondent's grounds of resistance to these claims. The Respondent is **ORDERED by 5pm on 7 July 2022** to send the prescribed ET3 form to the Tribunal and to the Claimant.

11. In all the circumstances I now agree to REVOKE the default judgment made on 30 May 2022 and to permit the Respondent to defend the claims. This decision is made in accordance with rule 72 of the Employment Tribunal Rules 2013. I am satisfied that a reconsideration hearing is not necessary in the interests of justice and that the Claimant had sufficient opportunity at the hearing on 30 May 2022 to make representations about the lateness of the Response and the non-appearance of the Respondent at that hearing.
12. I agree to an extension of time for the Respondent to lodge a Response on the prescribed ET3 form **no later than 5pm on 7 July 2022**. A copy of the Response must be sent to the Claimant.
13. The remedy hearing listed for 8 July 2022 will now be converted to a **telephone** case management hearing listed for 3 hours in order to make case management orders, agree a List of Issues, list a final hearing and to deal with other outstanding matters.

Employment Judge B Elgot
Dated: 1 July 2022