



EMPLOYMENT TRIBUNALS

Claimant

Waqas Muazam

AND

Respondent

Acton Community Forum Limited

HEARD AT: London Central

ON: In Chambers
24 September 2018

BEFORE JUDGE: Employment Judge Hemmings

REFUSAL OF APPLICATION FOR RECONSIDERATION OF JUDGMENT

The Background

1. On 24 November 2017 the Claimant presented to the Employment Tribunal a Claim Form complaining that the Respondent had unfairly dismissed him, had breached his contract of employment by failing to give him due notice of termination of employment or a compensatory payment in lieu, and made other claims which he subsequently withdrew.
2. The Respondent entered a Response denying those claims.
3. Case Management Orders and Directions were issued to the parties on 12 January 2018 in order to ensure that both sides were trial-fit for the two-day Final Hearing listed to commence on 12 April 2018.
4. The Respondent was legally represented throughout the pre-trial process by lawyers, or at least by an organisation offering legal services, Ema Solutions Legal Services. The Respondent's representative was, and remains, on the Tribunal's file records as representing the Respondent.
5. The Respondent's key witness was Michael Simms, an Executive Director. Mr Simms was central to this litigation, most if not all of the Claimant's allegations being directed towards Mr Simms' treatment of him.
6. Apart from the Respondent sending a List of its documents to the Claimant the Respondent breached every other Case Management Order and Direction.
7. The Respondent did not prepare a set of documents for the Hearing. It did not prepare a statement for Mr Simms. It did not prepare statements for any other witnesses.

The Final Hearing

8. The Respondent's legal representative did not attend the Employment Tribunal for the Final Hearing.
9. No notification or explanation was received by the Tribunal from the legal representative before, on the day of that Hearing, or subsequently.
10. No Officer of the Respondent attended at the Employment Tribunal for the Final Hearing to represent the Respondent.
11. No witnesses, or indeed anyone at all connected with the Respondent, turned up.
12. The Hearing proceeded in the absence of the Respondent or any representative. The Tribunal did not rubberstamp the claims and simply award the Claimant the compensation he was seeking.
13. The Claimant was put to proof by the Tribunal, after complying with Regulation 47 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, to establish that his claims were well founded. Further, the Tribunal interrogated closely the premises and mathematics underpinning the Claimant's compensation sums to satisfy itself that they were amounts which it would be just to award in accordance with the principles governing financial awards by Employment Tribunals.

The Judgment

14. The Tribunal concluded that the claims of unfair dismissal and wrongful dismissal were well founded, and awarded compensation of £38,845 in respect of the Respondent's unfair dismissal of the Claimant, and £3,500 damages in lieu of notice pay.
15. The Judgment was sent to the parties on 10 May 2018.

The Respondent's Application

16. On 23 May 2018 the Respondent applied to the Tribunal to reconsider its Judgment.
17. The grounds of the Application are that the Respondent's Chairman was terminally ill at the time of the proceedings; that the Claimant's claims were meritless and that the Respondent had a good defence to them; and that the level of compensation awarded would result in the closure of the Respondent's organisation.
18. The Respondent's Application was sent to the Claimant for his observations.
19. On 3 August 2018 the Claimant lodged objections to the Application with the Tribunal.

Consideration of the Application

20. The Respondent's Application has received careful consideration by Employment Judge Hemmings under Rule 71 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
21. Employment Judge Hemmings considers that there is no reasonable prospect of the original Judgment being varied or revoked.
22. That assessment is based on a number of factors.
23. There is no explanation for why the Case Management Orders and Directions were, almost completely, ignored; why there was no-one at the Final Hearing; why there was no communication with the Tribunal on that day nor any subsequent explanation after the Hearing.

24. There is no apparent connection whatsoever between, on the one hand, the sad and distressing disclosure of the Chairman's illness, and on the other, the conduct of the proceedings by the officers of the Respondent and its Executive Director Mr Simms, and their legal representative which explains the neglect of the Case Management Orders, the absence of the legal representative at the Final Hearing, and the total absence of the Respondent at the Tribunal to defend its case. It is inconceivable that the Respondent would have imposed the sole or primary responsibility and accountability for this litigation on the Chairman during such serious illness.
 25. If the Respondent could have successfully defended the Claimant's claims and demonstrate that they were not well founded, the Final Hearing in April was their opportunity to do so. Although that Hearing was substantially, but not completely, one-sided (because the Grounds of Resistance in the Response were available to consider alongside the Claimant's testimony and documentation), the evidence (in particular the covert recording of Mr Simms' meeting with the Claimant), presented by the Claimant provided consistency with his testimony of being stripped of responsibility and status without the Respondent communicating any justifiable business case, combined with a clumsy, unreasonable, inept and unfair process in doing so and ultimately terminating the employment relationship.
 26. Punishing the Respondent for its failures in these proceedings is not a relevant factor in the consideration process undertaken but whether the Respondent would engage responsibly with the litigation if given a second chance is a material factor. There are no persuasive grounds giving confidence that the Respondent would engage in the proceedings if given a second chance.
 27. Finally, the ability of a party to pay any compensation which might be awarded has no bearing on whether the other party's claims are well founded or not, and if so the amount of compensation they should receive for their unlawful treatment.
- Decision on the Application
28. The Respondent's Application is refused because there is no reasonable prospect of the original Judgment being varied or revoked.
 29. The Judgment sent to the parties on 10 May 2018 stands.

Employment Judge Hemmings

Date 5 October 2018

JUDGMENT AND REASONS SENT TO THE
PARTIES ON

17 October 2018

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FOR THE TRIBUNAL OFFICE