THE EMPLOYMENT TRIBUNALS

Claimant — Mr J E Rodgers

Respondent — Northumberland Tiles and Bathrooms Ltd

JUDGMENT (Liability and Remedy)
Empolyment Tribunals Rules of Procedure 2013 –Rule 21

The respondent's name is amended to that shown above without the need for re-service. The claimant is entitled to a redundancy payment payable by the respondent n the sum of £8794.57. The Hearing listed for 13th July 2018 is vacated

REASONS

1. The claims is for a redundancy payment only. No injustice is done by amending to add the word "Limited" to the title of the respondent .

2. A claim may be validly served on a limited company either at its registered office or its place of business, which in this case is the same address. This claim was posted there and returned, by Royal Mail, marked "addressee gone away"

3. In Zietsman and Du Toit t/a Berkshire Orthodontics-v-Stubbington the question on the appeal was whether an Employment Tribunal was entitled to conclude Mr Du Toit had been properly served with the proceedings. Ms Stubbington was made redundant and presented her complaint to the Tribunal, naming Berkshire Orthodontics as Respondent. No response was entered and on 1 October 1999, the complaint came before a Judge sitting alone. He ordered **an** amendment to name Mr Zietsman and Mr Du Toit, trading as Berkshire Orthodontics, as respondents and then proceeded to hear the claim in their absence. He upheld the complaints .

4. Mr Du Toit lodged application for review saying he had received notification of the decision on 22 October but did not know about the Tribunal case until that date. That review application was heard and dismissed.

5. The Tribunal identified the relevant provision in the Employment Tribunal Rules of Procedure 1993 as Rule 11(1)(b) by which it had power to review its decision on the ground that *"(b) a party did not receive notice of the proceedings."* They heard evidence from Mr DuToit, **none of which they rejected.**

6. They concluded the proceedings were served at the premises of which he remained a lessee. He had ceased to practice from that address and did not visit the premises, nor make arrangements for mail to be forwarded to him. The Tribunal

regarded that as thoroughly irresponsible conduct, to which his ignorance of the proceedings was wholly attributable so they declined to review the original decision.

7. On appeal Mr DuToit's Counsel submitted the Tribunal failed properly to construe and apply the statutory rules as to the giving of notice and further that their refusal to allow a review contravened Article 6 of the European Convention on Human Rights At a preliminary hearing , His Honour Judge Peter Clark accepted the claim was heard and determined in the absence of Mr DuToit in circumstances where there was no finding that he had actual notice of the proceedings. Whether or not he was deemed to have notice under the provisions of section 7 of the Interpretation Act 1978, was a question which ought to be argued at a full hearing.

8. At the full hearing His Honour accepted that whether Mr DuToit was deemed to have received documents for the purpose of Rule 11(1)(b) was to be determined by the statutory provisions contained in the 1993 Rules, read in conjunction with Section 7 of the Interpretation Act 1978, see Migwain Ltd v TGWU [1979] ICR 597; followed in T & D Transport v Limburn [1987] ICR 696, Rule 20(3) provided
"All notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post … to
(c) in the case of a notice or document directed to a party –
(i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, … or
(ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom …

Section 7 of the Interpretation Act provides

*"Where an Act authorises or requires any documents to be sent by post (whether the expression 'serve' or the expression 'give' 'send' or any other expression is used) then, unless the contrary intention appears, the service is **deemed to be affected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.**"*

9. The Rules now say

86.—*(1) Documents may be delivered to a party (whether by the Tribunal or by another party)—*

(a)by post;

(b)by direct delivery to that party's address (including delivery by a courier or messenger service);

(c)by electronic communication; or

(d)by being handed personally to that party…

The EAT said that "*in the context of employment protection legislation. It will often be the case that an employer goes out of business and ceases to trade from the premises at which the former employee worked. In such circumstances where is the employee to direct his claim? It must be to the last known place of business*".

10. I am convinced the claim should be deemed to have been validly served on the respondent.

11. On 20th December 2017 the claimant was dismissed when the business stopped trading. A Companies House search does not show formal insolvency procedures in force. The claim was served on 17th May 2018 by being sent to an address which I have checked corresponds precisely with the address of the respondent's registered office as revealed by a Companies House search. A response was due by 14th June 2018 but none was received. An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 (the Rules) to decide on the available material whether a determination can be made and if so, obliged to issue a judgment which may determine liability and remedy.

12 On 18th June 2018 I decided I had in the claim form sufficient information to enable me to find the claim proved on a balance of probability but not enough to determine the sums to be awarded. As I am empowered by the Rules, I sent written questions to the claimant. He has replied.

13. He was born 2 January 1958 . He started continuous employment on 10 January 2003.For calculation of redundancy payments, the period of statutory minimum notice is added to the actual date and gives the laimant an additional year of continuous employment.

14. The law relating to redundancy payments is in Part XI of the Employment Rights Act 1996 (the Act). A claimant is entitled to 1 week's gross pay for every complete year of continuous employment during the whole of which he was over 22 but under 41 and 1.5 weeks pay for years over 41. The claimant was over 41 years old throughout his 15 years continuous employment. The claimant's gross weekly pay was £ 390.87 gross. Multiplied by 22.5 = £8794.57

15 If the claimant cannot recover the money from the respondent he should apply to the Secretary of State at the Redundancy Payments Office

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TM Garnon Employment Judge
Date signed 25th June 2018.