



EMPLOYMENT TRIBUNALS

Claimant: Mr L Mercer

Respondent: MW STERLIN LTD

JUDGMENT

The respondent's application dated 23 August 2022 for reconsideration of the judgment sent to the parties on 4 August 2022 is refused.

REASONS

The respondent's application for a reconsideration of the judgment sent to the parties on 4 August 2022 is refused. Such application has been made outside the applicable 14 day time limit in circumstances where the tribunal does not exercise its discretion to extend time.

On the respondent's own account, it was aware of the judgment through communications with ACAS on 8 August 2022, yet did not submit the reconsideration application until 23 August. Judgment was sent to the respondent on 4 August 2022 to what was at that time its registered office. The respondent's application was not copied to the claimant in accordance with the Employment Tribunals (Rules of Procedure) 2013.

Even if the application was to be considered, the tribunal does not regard there as being any reasonable prospect of the original decision being varied or revoked. There was no change of the respondent's registered office until 10 August 2022. The claimant's earlier tribunal application was properly served and, if the respondent was no longer collecting mail from its registered office address, arrangements ought reasonably to have been put in place for such mail to be forwarded.

Further, there does not appear to be any dispute that the claimant was owed payment for accrued but untaken holiday entitlement as at the termination of his employment. The Kickstart scheme provided grant funding of employees' wages and other employment costs. The respondent still entered into a relationship of employment with

any individual engaged pursuant to such grant funding. As the respondent has clearly already been advised by ACAS, the respondent could during the period of employment have allocated days of paid holiday entitlement to be taken by the claimant. If it did not do so and the claimant had accrued but untaken entitlement as at the date of termination of employment, then a payment for such holiday is due to the claimant. Whether or not such payment can be reclaimed from the grant funding is a separate issue. Clearly the scheme envisaged that if employees remained in employment for the duration of their initial fixed term employment, they would have taken and been paid for all of their holiday entitlement. Arrangements were in place for funding if employment terminated early/unexpectedly. In any event, the ability of the respondent to reclaim employment costs was separate to its liability to the claimant for his statutory holiday entitlement.

Employment Judge Maidment

Date: 31 August 2022