



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Hancock

**Respondent:** Ministry of Defence

## **JUDGMENT ON APPLICATION TO RECONSIDER RULE 21 JUDGMENT**

The judgment of the tribunal is that the respondent's application for reconsideration is allowed. The Judgment dated 21<sup>st</sup> March 2017 is revoked.

### **REASONS**

1. The respondent has sought reconsideration of the judgment entered under Rule 21 dated 21<sup>st</sup> March 2017 which was sent to the parties on 30<sup>th</sup> March 2017 ("the Judgment"). The grounds are set out in its e-mail letter dated 21<sup>st</sup> April 2017. That letter was received at the tribunal office on 21<sup>st</sup> April 2017.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 21(2) judgment can be issued where no response has been presented within the time limit in Rule 16, or a response has been rejected and no application for reconsideration is outstanding, or the respondent has stated that no part of the claim is contested.
3. Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received outside the relevant time limit.

4. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
5. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
6. The grounds relied upon by the respondent are these: the address given by the claimant for service on the respondent was MOD Headquarters rather than the premises where the claimant worked (Bristol). Due to administrative error the paperwork appears not to have reached the individuals at the respondent who could respond to the claim in time. Those persons subsequently became aware that a claim had been presented and sought clarification from the Tribunal. The claimant objects to the application to reconsider the liability judgment and revoke it..
7. Under the previous Rules of Procedure (relating to the review of what were called Default Judgments) the EAT gave guidance on the factors which tribunals should take into account when deciding whether to review a default judgment in Moroak t/a Blake Envelopes v Cromie [2005] IRLR 535. The EAT held that the test that a tribunal should apply when considering the exercise of its discretion on a review of a default judgment is what is just and equitable. In doing so, the EAT referred to the principles outlined in Kwik Save Stores Ltd v Swain and others [1997] ICR 49.
8. In the Kwik Save decision, the EAT held that "... the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice". The case established that an Employment Judge should always consider the following three factors. First, the explanation supporting an application for an extension of time. The more serious the delay, the more important it is that the Employment Judge is satisfied that the explanation is honest and satisfactory. Secondly, the merits of the defence. Justice will often favour an extension being granted where the defence is shown to have some merit. Thirdly, the balance of prejudice. If the employer's request for an extension of time was refused, would it suffer greater prejudice than the employee would if the request was granted?
9. Applying these principles in this case, I conclude that the respondent would suffer greater prejudice than the claimant if the Judgment were not reconsidered and revoked. The claimant claims disability discrimination. It is a substantial claim. He claims ongoing financial loss, injury to feelings and seeks a recommendation. The respondent does not concede disability. There are triable issues. Any prejudice to the claimant caused by the respondent's failure to enter a response in time and the subsequent

application for reconsideration can be mitigated by an order for costs, if appropriate.

10. Accordingly I grant the application for reconsideration pursuant to Rule 70 because it is in the interest of justice to do so. The Judgment of 21<sup>st</sup> March is revoked. The respondent is now required to enter a substantive response on the prescribed form by 8<sup>th</sup> June 2017.

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Employment Judge  
Dated 18<sup>th</sup> May 2017

JUDGMENT SENT TO THE PARTIES ON  
18 May 2017

FOR THE TRIBUNAL OFFICE