



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Holburn  
**Respondent:** Beedspeed Ltd.  
**Heard at:** Lincoln  
**On:** Wednesday 12 September 2018  
**Before:** Employment Judge Blackwell

## Representation

**Claimant:** In person  
**Respondent:** Mr M Bashir, Peninsula

**UPON APPLICATION** made by letter dated **5 September 2018** to reconsider the judgment under rule 71 Employment Tribunals Rules of Procedure 2013 dated **19 June 2018**.

## JUDGMENT

1. The Judgment sent to the parties on 19 June 2018 is revoked in its entirety.
2. The late response sent to the tribunal on 5 September 2018 is accepted.

## DIRECTIONS

1. A full hearing will take place on 6 December 2018 before an Employment Judge sitting alone at the Lincoln Magistrates Court commencing at 10 am with a duration of one day.
2. The Claimant is to provide an updated schedule of loss to both the tribunal and the Respondent's representatives not later than 5 October 2018.
3. Any documents on which the parties wish to rely are to be exchanged not later than 5 October 2018.
4. The Respondent's representatives are to prepare an agreed bundle of documents by 19 October 2018 and they shall send a copy of that bundle to the

Claimant. A further two copies of the bundle must be provided to the tribunal for use on the hearing day.

5. Statements of witnesses who are to give evidence to the hearing on 6 December 2018 must be exchanged simultaneously not later than 9 November 2018.

### **Issues and the law**

1. By an email of 5 September 2018, the Respondent's representatives made an application pursuant to rule 71 of schedule 1 of the 2013 Regulations for a reconsideration effectively a revocation of the default judgment sent to the parties on 19 June 2018. The relevant law is therefore regulation 17 and the overriding objective, which I have quoted to the parties.

2. The chronology is as follows. The tribunal accepted a claim against Beedspeed Ltd on 22 January 2018. That claim form was sent to the Respondent on 5 April 2018 and the Respondent accepts that it was received. No response was produced by the Respondent and accordingly on 19 June 2018, a default judgment was sent to the parties.

3. On 31 August 2018, Peninsula came on record as the Respondent's representatives and on 5 September 2018 made an application for a reconsideration of the default judgment and enclosed with it (as is required) a draft response.

4. In summary, the case supporting that application (and in accordance with evidence given by Mr George the Managing Director of the Respondent), is as follows:

4.1 The Respondent accepts that the ET1 was served; that they took steps to draft a response but that was never done and it became lost in the Respondent's paperwork.

4.2 There were active discussions with ACAS and numerous telephone calls between Mr George and ACAS, though no evidence of that was produced.

4.3 In his evidence, Mr George said that he did not understand that a default judgment could be issued if no response was sent, notwithstanding the clear wording of the paragraph in the tribunal's letter of 5 April under the heading 'Responding to the claim'.

5. Mr George also gave evidence to the effect that the Company did not receive the default judgment of 19 June 2018. Mr George also argued that there were grounds for Mr Holburn's dismissal; those being two-fold. Firstly an allegedly threatening text message sent to Mr George by Mr Holburn and secondly that on investigation the Respondent had found that there was inappropriate use of the Respondent's internet carried out during working time. It is Mr George's case that those two matters taken together warranted the dismissal of Mr Holburn. I make no comment as to the merits of that argument, simply that it appears to me that it is arguable.

6. In response to that application, Mr Holburn sent an email to the tribunal opposing the application on the basis that the Respondent had clearly taken no account of the process and was in default of the process and I accept that he is right. He further called into question the fact that they did not appreciate that the claim had to be responded to given the paragraph which I have cited above.

7. My conclusion is that notwithstanding the manifest faults on the Respondent's part, the default judgment should be set aside and the response accepted primarily because the Respondent has an arguable case and because it is clear that a fair trial can still take place. As I understand it, it is agreed that the allegedly threatening text message was sent. As to the misuse of the internet, it will be for the Respondent to produce that evidence, an excerpt of which has been provided today. Thus Mr Holburn will be faced with a full hearing, which is something that he would always have had to face and the Respondent will have an opportunity to defend that claim in accordance with the relevant law.

Employment Judge **Blackwell**  
Date: 6 November 2018

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE