



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms E Farnan

**Respondent:** EGov Digital Limited

**Heard at:** Liverpool

**On:** 22 October 2018

**Before:** Employment Judge T Vincent Ryan

## REPRESENTATION:

**Claimant:** Mr R Gray, Counsel

**Respondent:** Mr P Clarke, Consultant

**JUDGMENT** having been sent to the parties on 31 October 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant has made an application for reconsideration of the judgment of the Tribunal made on 14 June 2018 and sent to the parties on 31 July 2018, being a judgment on preliminary hearing (PH judgment). The PH judgment revoked a judgment on liability dated 19 April 2018 and sent to the parties on 30 April 2018 (the liability judgment). Effectively the claimant wished to reinstate the liability judgment.

2. By rule 21 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") where on the expiry of the applicable time limit a respondent has not presented a response to a claim, or any response received has been rejected and no application for reconsideration is outstanding, an Employment Judge shall decide whether on the available material a determination can properly be made of the claim, or part of it. To the extent that a determination can be made the Employment Judge shall issue a judgment accordingly (a rule 21 judgment).

3. By rules 70 and 73 a Tribunal may reconsider a judgment of its own motion or on application of a party. On reconsideration the original decision may be confirmed, varied or revoked, and if it is revoked it may be taken again.

4. The claimant presented her claims of unfair dismissal, breach of contract, disability discrimination, the making of unauthorised deductions from wages, failure to pay holiday pay, breach of contract regarding the payment of training fees, on 16 February 2018. The early conciliation period had been between 29 November 2017 and 29 December 2017 following the claimant's dismissal which was effective on 3 November 2017.

5. Notice of claim was sent to the respondent by the Tribunal on 22 February 2018. The time limit for the respondent to respond to the claims was given as 22 March 2018. The respondent did not respond in time. In consequence of the respondent's failure to respond a judgment was made in favour of the claimant in respect of liability only (under rule 21), the liability judgment. A remedy hearing was listed for 14 June 2018.

6. On 13 June 2018 the respondent presented a response with an application for revocation of the liability judgment, and an application for an extension of time for the presentation of a response. The respondent's application was considered at the preliminary hearing on 14 June 2018. In the response the respondent asserted that the claimant was not dismissed "in that she left my employment on good terms after having had a meeting".

7. On 14 June 2018 what was to have been a remedy hearing became a hearing to consider the respondent's application regarding the liability judgment, and in respect of case management. At the hearing Mr Gary Daniels, who describes himself as "the business owner of EGov Digital Limited", the Managing Director and principal shareholder, gave evidence to explain the late presentation of the ET3 response. He complained of inactivity on the part of ACAS and also postal failures in his offices which led to his late awareness of any claims. Principally, however, Mr Daniels contended that he had been seriously ill with a heart condition as a consequence of which he was advised to take a holiday and rest from work; he said this led to him being absent from the country on holiday in Spain throughout the period from 16 February 2018 to 23 March 2018. The significance of this period of time is that it spanned the entire period from the date of presentation of the claim to the expiry of the time limit for presentation of an ET3 response. In his evidence he then said that he contacted ACAS upon his return and that efforts were made to resolve issues with the claimant, but that ACAS told him "not to do anything", reassuring him that there was time to resolve matters. He said that he could produce medical evidence and flight tickets confirming his inability to attend to matters through a combination of illness and absence from the country on holiday, which was on medical advice, at the material time. The respondent's ET3 response was a blanket denial of the claims. Mr Daniels through his representative confirmed that a detailed ET3 response would be presented and served.

8. In the light of Mr Daniels' evidence regarding his absences from the country and health issues, the liability judgment was revoked. Case Management Orders were made. In anticipation of an application by the claimant for reconsideration I extended the time for any such application to a date following disclosure by Mr Daniels of his medical and flight booking evidence. The respondent was required to send to the Employment Tribunal and to the claimant documentary evidence to support the assertions made by Mr Daniels in oral evidence that he was absent from the country for a period from 16 February 2018 to 23 March 2018 by way of travel

documentation and of his health condition (by way of medical evidence supporting his assertion that he was advised to take leave from work which then led to his visit to Spain in February and March 2018). The respondent was to present to the Tribunal and serve on the claimant an amended ET3 response by no later than 26 July 2018. It has not done so.

9. In response to those orders Mr Daniels has produced documentary evidence of his having flown from Manchester to Catania in Sicily on 28 March 2018 and from there to Malta on 2 April 2018; he returned from Malta to Manchester on 15 April 2018. The only medical evidence produced by Mr Daniels has been a letter from his GP dated 9 July 2018 confirming that Mr Daniels had “some chest pain in mid-February this year and was advised to take approximately one month of rest which would have taken him to the middle/end of March”.

10. Mr Daniels did not attend today’s reconsideration hearing. The respondent was represented by Mr Clarke. Mr Clarke confirmed that he heard from Mr Daniels at 8.45am today saying that he, Mr Daniels, was very tired and had been advised over the weekend that he ought to rest before going to hospital tomorrow for tests. Mr Clarke told me that Mr Daniels had sent an email to the Employment Tribunal at 9.28am requesting a postponement because he did not have the energy to attend the hearing in advance of the hospital appointment. Prior to the commencement of this reconsideration hearing I asked for a search to be made at both Liverpool and Manchester Employment Tribunal offices for that email, but none was available by the time that the preliminary hearing commenced at 10.05am. It had not been found. Mr Clarke, however, was able to show a copy of the email correspondence to Mr Gray on his phone, and Mr Gray confirmed the content of that correspondence.

11. The claimant produced today, and the respondent did not contest, an email from Mr Daniels to the claimant dated 6 November 2017 saying that he had taken advice and that under the terms of his contract he felt he had “no option but to implement immediate termination of your employment with EGov Digital Limited as effect from 03.10.2017 at 14.30pm”.

12. In the above circumstances it fell to me to consider whether to confirm, vary or revoke the PH judgment thereby reinstating, or otherwise, the liability judgment, in the interests of justice. I took into account rule 2 which sets out the overriding objective of the Rules, which is to enable Tribunals to deal with cases fairly and justly by reference, insofar as practicable, to several factors including those listed at rule 2(a)-(e). I was mindful of the requirement to seek to give effect to the overriding objective.

13. In reaching my judgment on the claimant’s application to revoke the PH judgment I took into account the respondent’s delays in presenting a response initially, a delay of some three months, in the light of the clearly misleading evidence of Mr Daniels regarding the dates when he was abroad, and the unsatisfactory nature of the medical evidence provided. The only response form presented by the respondent is contradicted by unchallenged email evidence, and having been given the opportunity to present a more detailed ET3 response the respondent has failed to do so. I am concerned at what appears to be a failure on the part of the respondent to actively pursue a defence to the claimant’s claims. There are issues

as to Mr Daniels' credibility. There is concern over the merits of the response presently filed, which the respondent has not attempted to further particularise.

14. Weighing all those considerations in the balance, having given the respondent the benefit of the doubt the first time but the respondent having then failing to comply with Case Management Orders made at the time of the PH judgment, I concluded that in the interests of justice I should grant the claimant's application. The respondent has had every opportunity to defend this claim properly but has failed to do so efficiently, consistently and in a timely manner.

15. In the interests of justice, therefore, I decided that the liability judgment was the appropriate judgment and in the circumstances, I revoke the PH judgment. In effect I restore the liability judgment in favour of the claimant.

Employment Judge T Vincent Ryan

Date: 05.11.18

REASONS SENT TO THE PARTIES ON

9<sup>th</sup> November 2018

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.