THE EMPLOYMENT TRIBUNAL

Claimant **Mr A Burch**

Respondent **Medi 4 Ambulance Services Limited**

JUDGMENT

The respondent's application dated 13 February 2019, for reconsideration of the remedy judgment of 22 January 2019 (following a rule 21 liability judgment) sent to the parties on 31 January 2019, is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked.

2. The tribunal has considered the contents of the respondent's application, timed at 17:08 on 13 February 2019, and the claimant's response of the early hours of the following morning.

3. The respondent is arguing, primarily, that the judgment should be varied or revoked because the respondent did not receive notification of the hearing, and "only by chance heard about it because of a follow up email from the tribunal dated 15 January 2019". The respondent also asserts that a representative of the Company was informed by a tribunal clerk on 17 January 2019 that if the respondent attended, "no contribution could be made". The respondent also makes other complaints about the contents of the judgment.

4. The tribunal notes that the rule 21 liability judgment was sent to the parties on 24 August 2018, and the judgment also informed the parties that there would be a remedy hearing on 8 November 2018. This judgment was plainly received by the respondent, as it was challenged by email (late) at 09:21 on 7 November 2018, albeit the challenge was never followed up. The previous day, the claimant had applied for a postponement to the remedy hearing, due to illness.

5. On 7 November 2018 the tribunal emailed both parties to confirm that the remedy hearing would be postponed. The respondent was plainly aware of this, and in any event made no attempt to attend on that date, and correspondence continued after 8 November 2018. The respondent would have been expecting a new date to be notified to the parties shortly, but made no attempt to confirm the date.

6. On 19 December 2018 the parties were sent a formal notice of remedy hearing, to take place at 10am on 22 January 2019. This invited both parties to attend.

7. There was further correspondence from the claimant, and on 15 January 2019 the tribunal emailed both parties on the instructions of the Regional Employment Judge, and amongst other things directed them to reply by 4pm on 18 January "with an indication of whether they will attend the hearing on 22 January, and copies of any submissions or statements relied on." The respondent accepts that it received this email, and indeed asserts that it took action as a consequence, two days later, and also forwarded the email to its solicitors in order to take legal advice. All tribunal correspondence was sent to the contact details supplied by the respondent.

8. The position as at Tuesday 15 January 2018 was therefore that even if (which is doubted) the respondent management were not previously aware of the date of the remedy hearing, they knew that it had been postponed and could be expected to be listed shortly, and the respondent had been informed that the hearing was going ahead the following Tuesday, and had ample time to respond, and to take legal advice from their solicitors should they wish to do so. The respondent failed to reply to the email, despite being required to respond by Friday 18 February 2019. The contents of the email also made it clear that the respondent could attend the hearing and/or present written submissions: it would defy logic for the Regional Employment Judge to remind both parties what evidence they could supply, if there was no prospect of the judge consenting to consider the material from the respondent.

9. An email from the respondent to the tribunal (not copied to the claimant), timed at 14:57 on Monday 21 January 2019 complained to the tribunal as to lack of support from the respondent's solicitors, and querying what the respondent should do. It asserted that the 15 February email had been forwarded to the respondent's solicitors. It referred to various documents complied by the respondent, plainly in the context that it might seek to adduce them at the hearing the following day. Interestingly, it made no reference to any conversation with tribunal staff in respect of attending. This email was seen by the judge, who took steps to confirm, before the hearing, that in fact no further documentation had been received by the tribunal.

10. The hearing proceeded in the respondent's absence on Tuesday 22 January 2019, under rule 47. The respondent neither sent a representative, nor sought to make written submissions or provide documentary evidence.

11. The tribunal does not accept that it is at all likely that the respondent was advised by an un-named member of the tribunal staff on 17 January 2019 that if they attended, they "would not be able to participate." The position is that it is a matter for the judge's discretion as to the extent to which a respondent would be permitted to participate at a remedy hearing following a rule 21 liability Judgment. Employment judge Emerton would have been willing to hear what the respondent had to say, had a representative been sent to the 22 January 2019 hearing, and had there been any doubt, the judge would have explained

procedures at the start of the hearing. The respondent had in any event had months to take legal advice from their solicitors as to how to approach the remedy hearing, rather than to expect employment tribunal employees to give them legal advice. The email of 15 January 2019 was plainly inviting the respondent to participate, and went as far as to direct the respondent to confirm whether or not someone would attend. The respondent chose to ignore the contents of that email: if there had genuinely been a positive decision not to attend because of a conversation with an un-named clerk, the tribunal would expect the respondent to have set this out in a reply to the tribunal's email of 15 January 2019.

12. Overall, the tribunal is satisfied that the respondent had sufficient notice of the remedy hearing, and even if (which is doubted) the respondent only learned of the date a week or so in advance, there was no request for a postponement, and the respondent failed to respond to the tribunal's direction to confirm its intentions as to attending. The respondent could have attended, and sought to put forward arguments as to the amount of any compensation. The time to make such arguments was at the remedy hearing, not in an email sent more than three weeks later. The claimant provided credible information to the tribunal, and that was the basis of the remedy judgment.

13. The arguments set out in the reconsideration application do not disclose any arguable basis to conclude, under rule 72(1), that there is a reasonable prospect of the original decision on remedy being varied or revoked.

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Employment Judge Emerton

Date 15 February 2019