



# THE EMPLOYMENT TRIBUNALS

**Claimant**  
Mr K Locke

**Respondent**  
Global Business Sales Ltd t/a Flawless (R1)  
Ms Pauline Bradley (R2)

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

MADE AT NORTH SHIELDS ( without a Hearing)  
EMPLOYMENT JUDGE GARNON

ON 12 February 2019

### JUDGMENT ON A RECONSIDERATION APPLICATION

**I refuse the claimant's application for a reconsideration of a judgment striking out his claim, which I made without a hearing on 23 January 2019 (sent to the parties on 24 January), under Rule 72 (1) of the Employment Tribunal Rules of Procedure 2013 (the Rules) because I consider there is no reasonable prospect of the original decision being varied or revoked.**

#### REASONS (bold print is my emphasis)

1. The claimant has applied for a reconsideration of a judgment striking out his claim. I gave written reasons for doing so which I need not repeat in full. Suffice to say, striking out as a sanction under paragraphs (b) (c) and/or (d) of Rule 37 is an exceptional step, which is why I gave two full pages of reasons for doing so.

2. Rule 72 includes:

*(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*

*(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

3. The claimant has at all times not been legally represented. For present purposes I accept he has a mental health condition which may adversely effect his concentration and memory. Everyone has the right to a fair hearing under the European Convention on Human Rights which must be afforded without discrimination on any ground. I knew when I made the judgment the claimant was a litigant in person who may have a mental health impairment. I would not have struck out his claim if I thought those factors were sufficient excuse for his omissions. The cornerstone of my judgment was that he had done nothing he was ordered to do, and, having been given several opportunities to explain why, had not done so.

4. His application arrived by email timed at 16:20 on Monday 28 January 2019 but he had omitted, as required by the Rules, to copy it to the respondents. The Tribunal did so for them to comment which they did. The claimant's email contains some spelling and grammar errors which when corrected results in the following salient text:

*I have received your letter, with the date of 24th January 2019.*

*My Health hasn't been great, I did send my medical notes over. But apparently late.*

***I was waiting for a letter from the courts to tell me what to send. As I have EUPD. I suffer from memory problems. I couldn't remember much from the day I had in the hearing. But the judge did mention I would get everything in writing.***

***I did not receive any letter, which I waited for.** So I got my medical notes quite late from asking for them, then sent them the next day. I couldn't help sending them over late. My doctors had full responsibility to give them closer to the time I asked but it did take much longer than expected.*

*I sought advice from Citizens Advice. Their trained lawyer did mention he couldn't help due to being so busy. He did mention another place which could help me with a "no wins no fee". But due to my health I haven't been able to contact them.*

*Can I please ask for an extension, due to the fact none of this is my fault or deliberate. I am vulnerable adult who hasn't been in control of their mind. I need some time to get my health to a healthy standard, then I can be able to deliver and represent myself. My doctors and myself are very concerned of my well being if I manage to continue while I'm unwell.*

*All I'm asking for is an extension and the opportunity under the Disability Act to have more time to deliver my side for fair judgment."*

5. As I recorded in para 7 of the reasons for my judgment, Employment Judge Buchanan conducted a thorough preliminary hearing on Wednesday 14 November 2018 in Middlesbrough. He explained matters orally then wrote a 10 page document setting out what had been discussed and effectively telling the claimant what to do.

6. In order for the parties and any appeal tribunal to understand this judgment, I need to explain briefly how the tribunal operates in this region. The Judges and administrative staff are based in North Shields. Judges sit in Middlesbrough when required. While at Middlesbrough, or elsewhere, a Judge can type Orders and send them by email to North Shields. The file shows Employment Judge Buchanan sent the Orders he had typed by email to North Shields. I have checked with him and he sent it on 21 November which, considering the detail of the document is swift. **He asked in his email that the Orders be sent to the parties urgently.**

7. Rule 86 says documents may be delivered to a party by post, direct delivery or electronic communication. Paragraph 3 then says "If a party has given both a postal

*address and one or more electronic addresses, **any of them may be used** unless the party has indicated in writing that a particular address should or should not be used.* ". On the claim form the claimant has provided a postal address and an email address. In reply to a question "How would you **prefer** us to contact you (please tick only one box)." He had ticked the box "Post".

8. A vigilant tribunal clerk spotted a typing error in one of the compliance dates and on 21 November at 14:39 sent the Orders electronically to the respondent and the claimant drawing their attention to the error. The electronic record shows this email was sent and did not come back as undelivered. She chose to send it electronically because Employment Judge Buchanan had emphasised the urgency. On an earlier, non urgent, occasion the same clerk had done a covering letter to the claimant and meticulously written in manuscript on the file copy the date it was posted.

9. The emboldened passages in the claimant's application show his main point is that he did not receive the Orders promptly. The respondents' representative says in his letter of 5 February I should not reconsider the judgment, because even if that were true the claimant could have taken steps to redeem the situation earlier than he did. I would not refuse this application on those grounds if I believed the Orders had not arrived in good time. Thereafter, if his doctor was slow in sending him information (and I accept from my experience of other cases many are) all he had to do was tell the Tribunal he needed more time. When I gave him a final chance to explain why the claim should not be struck out, all he had to do was reply as swiftly as he has made this reconsideration application within four days of receiving the judgment which, again being an urgent document was sent by email on 24 January at 13:16.

10. The only ground for a reconsideration is whether one is necessary in the interests of justice, that being justice to both sides and, as emphasised in many cases by the Court of Appeal, justice to other litigants when the proper administration of justice by the Tribunal is impeded by parties failure to comply with Orders . It is not in the interests of justice to reconsider a judgment when a party has no reasonable excuse for not complying with Orders on time or for taking any steps to explain his problems in doing so until he receives a strike out judgment..

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**T M Garnon EMPLOYMENT JUDGE**  
**JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 12 FEBRUARY 2019**