



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Ms Rosier

**Respondent**  
Holme Bank Residential  
Home Ltd (in creditor's voluntary liquidation)

AND

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Birmingham

**ON**

14 May 2019

**EMPLOYMENT JUDGE** Harding

### Representation

**For the Claimant:** No Appearance

**For the Respondent:** Mr and Mrs Remmington, Directors

## RECONSIDERATION JUDGMENT

Upon an application first made by the claimant by letter on 16 November 2018, and renewed on 28 December 2018, to reconsider the judgement under Rule 71 of the Employment Tribunal's Rules of Procedure 2013:

The judgment dismissing the claims is confirmed.

## REASONS

1 The first application for a reconsideration, made by the claimant by letter on 16 November 2018, was refused by Employment Judge Algazy QC on the basis that no explanation had been provided by the claimant for the failure to respond to the tribunal's correspondence.

2 The application for a reconsideration was renewed by the claimant's representative, Mr Apraku, solicitor, by way of letter dated 28 December 2018. In this letter it was asserted that the claimant had failed to respond to the tribunal's correspondence for two reasons; the claimant's mother had died meaning that the claimant was travelling outside the UK and then, for family reasons, Mr Apraku was out of the office for a period of time after which the case was transferred to another colleague within the firm who did not then deal with the tribunal's correspondence.

3 A notice of hearing was sent to both the claimant and the respondent in respect of today's hearing. In an accompanying letter it was explained to the claimant that it would likely be necessary for the claimant's solicitor to give evidence as to the reasons for the failure to reply to correspondence.

4 Today the respondent has attended (now representing itself because it has gone into creditors voluntary liquidation) and the claimant and her representative failed to attend. No explanation for the non-attendance was provided.

5 I refused the application for a reconsideration for the following reasons. The claimant was first asked to particularise her discrimination claims on 24 May 2018. Having failed to provide this information the claimant was ordered to do so on 7 June 2018, with an extension subsequently granted to 21 June 2018. She was written to again on 6 August and again on 13 September. She failed to provide the information requested. On 3 October the tribunal of its own initiative wrote to the parties indicating that consideration was being given to striking the claim out because it was not being actively pursued. There was no response to this letter and the claim was struck out on this basis.

6 Accordingly the claimant has been asked to provide the information requested on multiple occasions over a period of nearly 5 months, and has failed to do so. Whilst there has now been an explanation provided for this failure, the explanation lacks detail and cogency. It seems likely, given the length of time over which the information has been requested, the number of requests made and the fact that the claimant has been represented by a solicitor for the entirety of this period, that the failure to provide the information is deliberate or at best grossly negligent.

7 There is no good explanation for the failure.

8 The trial date has been lost.

9 A fair trial is no longer possible. Importantly, the respondent is now in creditors voluntary liquidation and the business has closed down. The respondent told me, and I accepted, that it would be unlikely that they could now contact relevant witnesses. Even if witnesses could be traced by the respondent the claimant's employment terminated on 26 January 2018 and the passage of time is such that memories will likely have faded and the cogency of the evidence will therefore be affected. That is all the more the case where, as here, the claims are not yet particularised. The discrimination complaints remain wholly unparticularised and the unfair dismissal claim is poorly pleaded; the only point raised by the claimant within her claim form is that she disputed the misconduct allegations - an issue not directly relevant to whether the claimant's dismissal was unfair. The basis of any of the claimant's claims continues to be unclear, therefore, and this and the passage of time will undoubtedly have an adverse effect on the cogency of the evidence.

**Case No:1301488.18**  
**Employment Judge Harding**  
Dated: 14 May 2019