



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Boulter

**Respondent:** McLaughlin Contractors Limited

**Heard at:** Liverpool

**On:** 19 November 2019

**Before:** Employment Judge Robinson  
(sitting alone)

## REPRESENTATION:

**Claimant:** Miss Owusu-Agyei of Counsel

**Respondent:** Mr S Swanson, Consultant

# JUDGMENT

The judgment of the Tribunal is that:

1. The application by the respondent to have the Judgment of Regional Employment Judge Parkin, sent to the parties on 12 July 2019, revoked fails and is dismissed and I confirm that Judgment.
2. I order that the respondent shall pay to the claimant forthwith the costs of today for counsel's attendance on behalf of the claimant in the sum of £672.96 inclusive of VAT.

# REASONS

1. This is an application by the respondent to set aside a rule 21 Judgment issued by Regional Employment Judge Parkin in July 2019.
2. I have heard evidence from Mr McLaughlin who is the Managing Director of the respondent company.
3. The principles I have applied in this matter are as follows.
4. The only ground, under the 2013 Rules, for me to interfere with the decision of Regional Employment Judge Parkin is if I believe that it is in the interests of justice require me to do so. That rule, however, incorporates the grounds under the old rule 34 from the 2004 Rules, and I have to consider the interests of both the claimant and

the respondent. There is an underlying public policy principle that there should be finality in litigation, and I noted that the original Judgment was made over four months ago.

5. An Employment Tribunal must seek to give effect to the overriding objective and to deal with cases fairly and justly. There is no procedural or any other error with regard to Regional Employment Judge Parkin's rule 21 Judgment. It has been made correctly after information was sought from the claimant as to how much he believed was owed to him for holiday pay. Regional Employment Judge Parkin must have been satisfied with regard to liability that the claimant's case stood up.

6. Where documents have been correctly posted the burden of proving that they have not been received lies on the party alleging non receipt.

7. The interests of justice must also be exercised consistently with the right to a fair trial under article 6 of the European Convention of Human Rights incorporated in UK law by the Human Rights Act 1998, and I have considered that issue.

8. In particular, rule 90 provides that where a document was properly addressed, stamped and posted, it will be presumed (unless the contrary is proved) that it was received by the party to which it was sent on the day on which it would be delivered in the ordinary course of the post (i.e. the second day after posting).

9. I must take into account all relevant factors including the explanation that I received from Mr McLaughlin for the delay and the merits of the defence and at the same time I must weigh and balance the possible prejudice to each party and reach a conclusion that was objectively justified on the grounds of reason and justice.

10. The facts before me relevant to the issues are these.

11. Proceedings were properly issued in time by the claimant for holiday pay. He considered himself entitled to that holiday pay as a worker contracted to the respondent company.

12. The claimant provided a Schedule of Loss to the Tribunal which confirmed he was owed £1,928.66 and Regional Employment Judge Parkin made that award.

13. A copy of that Judgment was sent to both the claimant and the respondent on the same day, which was 12 July 2019. The respondent's copy was sent to 19-21 Crow Wood Lane, Widnes.

14. Mr McLaughlin said his son received it at 19 Crow Wood Lane where his son and family live. That is the house next door to the company's yard at 21 Crow Wood Lane.

15. Once he received it Mr McLaughlin asked Peninsula to contest it, and this application was made.

16. Mr McLaughlin says that a block of flats was built next to his yard some three years ago and that since then, on a weekly basis, some post has gone missing. For example, note for materials from Keyline and some correspondence from Travis Perkins, did not arrive. He says that that was some time ago but could not give me

the dates when that correspondence did not arrive or the specific address to which he contends it went.

17. Mr McLaughlin has never complained to the Royal Mail or his postman about this alleged interference with his post. He says that “a little old lady” lives at one of the flats (also numbered 21 Crow Wood Lane) and that he has received some of her post at his yard and he simply pushed it through her letterbox. He has never met the lady or asked her whether she has received some of his company’s post. As far as he is aware, she has never pushed any post through his door.

18. Mr McLaughlin has, some time ago, complained to his local council about the confusion over the numbering, but the council has done nothing about it. Mr McLaughlin also went on to say he could only “presume” his post went to the lady next door, he had no proof that that was the case.

19. The respondent does not say that he has had difficulty with his post at 207 Barrows Green Lane, Widnes, which is Mr McLaughlin’s home address.

20. Mr McLaughlin also says a number of other things. For example, that he has been telephoned by the claimant’s trade union official on a few occasions in both 2018 and 2019 (at first, he said only 2019 but changed his evidence to include 2018) about the claimant’s claim and discussed the situation with her. He always maintained, however, that Mr Boulter was a self-employed person and not a worker or employee of his company. His position has not changed in that regard.

21. Mr McLaughlin has never been to an Employment Tribunal before nor has any other of his workers (self-employed or otherwise) taken him to a Tribunal.

22. When speaking to the trade union official he first said in cross examination that she wanted him to settle “otherwise it would go to the Tribunal”. He then backtracked when he realised what he had said and said that the trade union official did not mention the word “Tribunal”.

23. Mr McLaughlin said he spoke to her a few times but did not know her name.

24. Mr McLaughlin also told me that the majority of his company post arrived in any event at his home address at 207 Barrows Green Lane. He told me that the only piece of post he got at 19-21 Crow Wood Lane was the rule 21 Judgment. It is that address which is the Registered Office of the respondent company.

25. With regard to these proceedings, Mr McLaughlin says that he has only ever received that Judgment and no other documents whatsoever.

26. The evidence with regard to documents leaving the Tribunal Administration in Manchester is as follows.

27. The claim form was sent originally to 207 Barrows Green Lane, Widnes, WA8 3UE on 21 December 2018. Then it was wrongly sent to 19-21 Barrows Green Lane, WA8 9UE on 31 January 2019 and then re-sent to the correct address on 8 March 2019. That correct address is 19-21 Crow Wood Lane, Widnes, WA8 3NA. As I have said, that is the registered address of the respondent company.

28. Therefore, the date of the hearing was sent to the proper address and it confirmed that hearing would be on 22 July 2019. No response was received so a further letter was sent to 19-21 Crow Wood Lane saying no response received and therefore a Judgment may be issued. A further letter copied to the respondent but sent to the claimant asking for monetary details of the claimant was sent out on 3 June 2019 to the correct Crow Wood Lane address. The Judgment was sent on 12 July 2019.

29. There is no doubt that initially the Tribunal sent papers to the wrong address but that mistake was rectified in March 2019 and since then letters have been sent to the correct address. Those letters are the letter from Judge Horne on 8 March 2019, the letter from the Manchester Administration with the ET1 enclosed and a date of hearing in July endorsed thereon on 8 March 2019, a warning that Judgment may be issued because there was no response received which was sent on 3 June 2019 and a copy letter sent to the claimant was also sent to the respondent on 3 June 2019. Finally, the Judgment was sent on 12 July 2019.

30. Mr McLaughlin goes to his yard weekly and he confirmed his son did receive the Judgment at the 19-21 Crow Wood Lane address.

31. Those are the facts.

32. On those facts and applying the law with regard to this matter I came to the following conclusion.

33. With that background and history, it is inconceivable that the respondent did not receive the letters that I have set out above.

34. Bluntly, I did not believe his evidence.

35. If there had been difficulty with his post as he describes he would have complained to the Royal Mail or done something about it. His oral evidence was, in part, inconsistent with his statement. I believe that the respondent knew that the Tribunal proceedings were in the offing as early as 2018 when he spoke to the claimant's trade union official and discussed settlement with that official in the knowledge that ultimately proceedings would be issued if no settlement was reached. I find he has received the post sent to him by the Tribunal but has chosen to ignore it on the basis that he is convinced the claimant was self-employed and he was not prepared to countenance the possibility that Mr Boulter was a worker and therefore entitled to holiday pay.

36. Receipt of the Judgment brought the respondent's Managing Director up short and he knew at that point he could not leave matters anymore.

37. Mr McLaughlin accepts in his statement that the Tribunal served the notice of claim but he says that he did not receive a copy. I do not believe him. He says blithely, at paragraph 10 of his witness statement, that he often has difficulty with his post and it is often redirected elsewhere "due to another property in the area having a similar address", yet knowing that he never complained to the Post Office, his postman or even visit the lady at number 21.

38. In his oral testimony Mr McLaughlin waters down his evidence to say that he "presumes" post went to her address.

39. Applying the principles outlined at the outset of this Judgment to those facts I am not inclined to revoke the Judgment. The respondent is of the view the claimant is not a worker. Mr Boulter, in his pleadings gives compelling evidence he was a worker and not self-employed. These proceedings were issued some considerable time ago and the claimant has been awaiting money awarded to him a number of months ago. After so many months it may be difficult for there to be a fair trial as documentation may have been lost or destroyed. Mr Boulter has acted in good faith, I do not believe Mr McLaughlin has. He has simply buried his head in the proverbial sand. It would not be in the interest of justice to revoke or amend the judgment. Furthermore, I believe the respondent company has acted unreasonably in forcing the claimant to defend his position and attend through counsel today. On that basis I have ordered that counsel's cost of today should be paid by the respondent company.

40. Consequently, the respondent's application is refused and I confirm Regional Employment Judge Parkin's Judgment on the basis that for whatever reason the respondent chose to ignore the letters that were sent to him by the Tribunal, hoping that this matter would go away. Unfortunately for him it has not.

Employment Judge Robinson

Date: 25 February 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

27 February 2020

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.