



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R White

**Respondent:** Castle Glass & Glazing Limited

## JUDGMENT UPON RECONSIDERATION

The Judgment of the Employment Tribunal is that the application for reconsideration of the Judgment dated 13 February 2020 has no reasonable prospect of success and is refused.

### REASONS

1. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the judgment may be confirmed, varied or revoked.
2. An application for reconsideration shall be presented in writing (and copied to all of the other parties). This must be made within 14 days of the date upon which the written record of the decision (which in this case is the judgment of 13 February 2020 (*the Judgment*')) was sent to the parties. It follows therefore that the application for reconsideration of the Judgment was presented in time. The Judgment was sent to the parties on 19 February 2020 and the reconsideration application was received by the Tribunal on 26 February 2020. The reconsideration application was submitted by Donna Higgins for or on behalf of UPVC Trade Centre Limited (*UPVC*).
3. The history of the matter shall now be set out.
4. On 4 November 2019 the claimant presented a claim for wrongful dismissal and of having suffered an unlawful deduction from his wages. He cited the respondent as Stephen Stenton. The claim form was rejected by the Tribunal upon the basis that Mr Stenton was not named as the prospective respondent when the claimant contacted ACAS about the matter before issuing the claim. Pre-action contact with ACAS is mandatory pursuant to the Employment Tribunals Act 1996. Castle Glass and Glazing Limited (*Castle*) was named as the prospective respondent in the ACAS certificate dated 4 November 2019. On 7 November 2020 the claimant re-presented the claim. This time he cited Castle as the respondent.

5. The claim form was sent by the Tribunal to Castle on 11 November 2019. It was sent to 'The Old Billiard Hall, Edlington'. Castle was required to present a response to the claim by 9 December 2019. On the same day the Tribunal notified the parties that the hearing of the case would take place on 13 January 2020 in the Sheffield Employment Tribunal.
6. This hearing did not go ahead. It was postponed to 13 February 2020. Notice of the revised hearing date was sent to the parties (being the claimant and Castle) on 18 December 2020. The hearing was listed to be heard in Leeds Employment Tribunal. The reason for the postponement from 13 January to 13 February 2020 was that Employment Judge Cox was not satisfied that Castle had been served with the proceedings. She directed that the claim form be re-served at Castle's registered office at 46 Broadway, Swinton. Castle was given until 15 January 2020 within which to present a response to the claim.
7. On 8 January 2020 a response from was received. This was submitted in the name of UPVC. The address given for UPVC is the same as for Castle: ('The Old Billiard Hall'). The contact name was given as 'Steve, Donna.' 'Steve' would appear to be Mr Stenton and 'Donna' would appear to be Ms Higgins. Mr Stenton is a director of UPVC and Castle. Ms Higgins is a director of Castle.
8. On 13 January 2020 Employment Judge Shepherd wrote to the parties to propose that the respondent's name be changed from Castle to UPVC. Neither party responded to his proposal.
9. A further revised notice of hearing was issued on 12 February 2020 by email (timed at 09:34) listing the case for hearing the next day in the Sheffield Employment Tribunal instead of the Leeds Employment Tribunal. Both parties also were informed of this by telephone. The notice of hearing was issued in the name of the claimant and UPVC. On 12 February 2020 Castle sent an email (timed at 10:31) in which it was contended that the claimant was employed by UPVC.
10. No Order was made by the Tribunal removing Castle as the respondent to the claim or joining UPVC into it. The parties to the case therefore remained as the claimant and Castle.
11. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.
12. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations. The obligation includes:
  - *Ensuring that the parties are on an equal footing.*
  - *Dealing with cases in ways which are proportionate to the complexity and importance of the issues.*
  - *Avoiding unnecessary formality and seeking flexibility in the proceedings.*
  - *Avoiding delay, so far as compatible with proper consideration of the issues.*
  - *Saving expense.*
13. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this

is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interest of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.

14. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application on paper is to act as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to go before the Employment Judge at a reconsideration hearing.
15. UPVC was not a party to the claim. It has no standing to make a reconsideration application. Only the claimant and Castle may do so.
16. That is sufficient to dispose of the reconsideration application. However, even if UPVC had standing I would rule that the reconsideration application has no prospect of succeeding.
17. There is a significant overlap between Castle and UPVC. The officers of Castle knew of the hearing held on 13 February 2020. Castle emailed about the case on 12 February 2020 after having received a revised notice of the hearing listing the case to be heard in Sheffield rather than Leeds upon the following day. Castle received the notice of hearing date 18 December 2019, the notice of appearance (in the name of UPVC) having been received by the Tribunal on 8 January 2020. It follows that notice of the claim was received by Castle.
18. Castle chose not to attend the hearing. Castle remained a party to the proceedings. I was satisfied from the claimant's evidence that his employer was Castle.
19. The interests of justice apply to both parties. It would be unjust to the claimant to allow the respondent (Castle) now to seek to argue the case in circumstances where the respondent was aware of the hearing yet elected not to attend and present any evidence. No explanation (let alone a satisfactory explanation) has been given for the non-attendance.
20. There also is a public interest in finality of litigation. This interest will be defeated if a party who eschews the opportunity of attending is allowed to reopen the matter without good cause.
21. There is no basis upon which it can be said that there is any reasonable prospect of the judgment of 13 February 2020 being reconsidered. Essentially, UPVC (even if they have any standing to pursue the application) simply disagree with the decision that I reached upon the evidence presented to me. The claimant attended and gave his evidence. Castle and UPVC did not do so. No good reason has been given for the failure to attend. Castle must take the consequences. There is no reasonable prospect of the judgment being varied or revoked at a reconsideration hearing.

Employment Judge **Brain**  
Date: 5 March 2020