



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Turley

**Respondent:** Stephen Derek Wright T/A Eezivape

**Dated:** 9th March 2020

**Before:** Employment Judge R F Powell

## RECONSIDERATION

1. I extend time for the Respondent's application for reconsideration under Rule 70(1) of the Tribunal's Rules of Procedure 2013 to the 21<sup>st</sup> January 2020.
2. I refuse the application because I consider that there is no reasonable prospect of the original decision being varied or revoked.

## REASONS

### Introduction

1. On 17<sup>th</sup> January 2019 the claimant commenced Early Conciliation with the respondent through ACAS, the conciliation period ended on the 17<sup>th</sup> February 2019. The claim was presented on the 7<sup>th</sup> March 2019 and was subsequently served on the respondent. The respondent did not present an ET3 and subsequently the parties were informed in writing that the respondent had, in accordance with rule 21(1)&(3) of the Employment Tribunal's Rules of Procedure 2013 was limited to participate in hearings to the extent allowed by the judge hearing the case.

2. The respondent did not challenge that decision at the time and has not expressly done so in this application for reconsideration of the Judgment dated the 29<sup>th</sup> December 2019.
3. Subsequently the parties received written notice of a hearing to determine the claims and issues of remedy listed in August 2019. The respondent did not object to the progress of the case and did not challenge the decision to restrict his participation in proceedings. The hearing listed for August 2019 did not proceed and the case was relisted for hearing on the 10<sup>th</sup> December 2019 and the parties were sent a written notice of the date. The respondent did not object to the date, he did not request an adjournment, he did not make any representation to enable his participation at that hearing and he did not attend the hearing.
4. The tribunal sent the written Judgment on liability and remedy to the parties on the 31<sup>st</sup> December 2019.
5. The claimant asserts that the judgment was delivered to the wrong address and accordingly he was only aware of the judgment on Friday the 18<sup>th</sup> January 2020. He made his written representation to the Employment Tribunal on the 21<sup>st</sup> January 2020.
6. The claimant was invited to comment on the application and forcefully objected to it. The respondent also made a further, and necessarily less hurried submission on his own behalf.
7. I have taken all of the above into account in reaching my decisions.

### **The relevant rules on reconsideration**

8. Applications for reconsideration are governed by Rules 70 to 73 of the Tribunal's Rules of Procedure 2013.
9. Rule 70 provides that a 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". Following a reconsideration, a judgment may be confirmed, varied or revoked (and, if revoked, it may be taken again).
10. Rule 72 describes the process by which an application for reconsideration should be determined. The application should, where practicable, first be considered by the Employment Judge who made the original decision, or who chaired the full tribunal that made the original decision. Rule 72(1) requires that judge to refuse the application if he or she "considers that there is no reasonable prospect of the original decision being varied or revoked". If the judge considers that there is a reasonable prospect of the original decision being varied or revoked, the Rules go on to provide for the application to be determined with or without a further oral hearing.

11. Rule 71 states that an application for reconsideration, which is made after a Hearing, shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.
12. The aforesaid rules also afford me the discretion to extend time (Rule 5) where it is in the interests of justice to do so and in accordance with the overriding objective of the rules (Rule 2).

### **The claimant's application**

13. The essence of the respondent's application is twofold. In part it criticises the merit of the claimant's case and in part it explains the reason for the respondent's absence, or lack of action, in relation to these proceedings.
14. The respondent sets out a quite detailed account of personal difficulties concerning matters from 2013 to March 2020. I am concerned with the period which reflects the commencement and conclusion of the tribunal proceedings; March to December 2019. Relevant to that period the respondent stated:

"...then on new year's eve 2018 we had guests at our house. One of our guests was the builder, Darren Holt who started getting aggressive with a female friend and i asked him to leave. He then brutally attacked me and my partner without any provocation leaving me unconscious with serious facial injuries and bleeding heavily, and my partner with injuries including a stab wound. He was arrested and me and my partner were taken to Glan Clwyd Hospital. We believe he was taking some sort of drugs at the time. Following that I couldn't leave the house for weeks and when I eventually did I was too scared to go anywhere there were people.

To this present day I am still suffering from the effects of this which has completely changed my life and changed me as a person. Since this attack I have had suicidal intentions on several occasions. I wasn't able to work for a few months due to my mental state, an injury to my shoulder caused by the attacker and other unrelated health concerns which are causing me distress to this very day affecting my day to day *living*."

15. The respondent describes a turbulent and distressing series of events which caused long term adverse consequences. The degree to which is was affected he has identified;

"I wasn't able to work for a few months due to my mental state, an injury to my shoulder caused by the attacker and other unrelated health concerns which are causing me distress to this very day..."

### **The presentation of the application for reconsideration**

16. Following a hearing on the 10<sup>th</sup> December 2019 the tribunal sent the written judgment to the parties on 31st December 2019.
17. On 21<sup>st</sup> January 2020, the respondent wrote to the tribunal in terms which I took to entail an application for a reconsideration of the December 2019 judgment. The respondent stated that, although correctly addressed, the written judgment

had been delivered to an incorrect address and was received by the respondent on the 18th January 2020.

18. Consequently, the application was presented after the expiry of the fourteen day time limit.
19. I accept the respondent's explanation that he received the judgment on the 18<sup>th</sup> January 2020 and that he had considered the judgment, drafted his response and submitted in within three days of receipt.
20. The purpose of providing a party with fourteen days to present an application for a reconsideration is to allow a reasonable opportunity to consider a tribunal's decision and respond promptly. In this case, the claimant did so within three days of receipt of the judgment.
21. In these circumstances I consider it to be just to extend the time for presentation to the 21<sup>st</sup> January 2020 and accordingly the application was presented in a timely manner.

*The Merit of the application*

22. On the respondent's own account, he was well enough to work "a few months" after the serious assault of New Year's Eve 2018.
  23. The respondent, taking a generous approach to the phrase "a few months", was fit to work by April or May of 2019. And in the absence of any assertion that he could not read and respond to correspondence earlier than the time he was able to return to work, I am very cautious of accepting that the respondent's account explains why he did not object to the tribunal's decision to limit his participation in proceedings or, in the period between May and December 2019, raise the matters of his ill health which he raised swiftly following receipt of the judgment ordering him to pay substantial compensation to the claimant.
  24. The respondent did not challenge the hearing date set for August 2019 nor did he object to the December 2019 hearing date, nor did he apply for an adjournment of the December 2019 hearing when, on his own account, there was no reasonable impediment to his ability to write to the tribunal to do so.
  25. In these circumstances, I do not consider that his explanation for his inaction for the six months following May 2019 is, or could be sufficiently persuasive to lead me to a conclusion that the judgment of December 2019 should be revoked or varied.
  26. For these reasons, I have concluded that, for the purpose of Rule 72(1), the application, taken at its highest, has no reasonable prospect of leading to the variation or revocation of the judgment.
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Employment Judge R F Powell  
Dated: 9<sup>th</sup> March 2020

RECONSIDERATION DECISION SENT TO PARTIES ON  
.....10 March 2020.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS