EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112577/2018

Held in Glasgow on 14 March 2019 (Reconsideration Hearing)

Employment Judge: Ian McPherson

Miss Jade Haddow	**Claimant** **In Person**
Premier Convenience Ltd	**Respondent** **Represented by:** **Mr Shabaz Ahmed - Manager**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

(1) The claimant having withdrawn her complaint of unfair dismissal by the respondents, on account of her not having sufficient qualifying service under **Section 108 of the Employment Rights Act 1996**, the Tribunal, having heard from both parties at this Reconsideration Hearing, **dismissed** that part of her claim against the respondents in terms of **Rule 52 of the Employment Tribunals Rules of Procedure 2013**.

(2) Having heard from both parties, on the claimant's opposed application of 16 November 2018 for reconsideration of the Tribunal's previous Judgment dated 19 October 2018, entered in the register and copied to parties on 13 November 2018, the Tribunal, acting in terms of **Rules 70 to 72 of the Employment Tribunals Rules of Procedure 2013**, **reconsiders** that Judgment, and decides that it is in the interests of

justice that it should be **revoked**, but only as regards paragraph (3) of that Judgment, and **otherwise confirms** that Judgment.

(3) Further, having heard from both parties, on the respondents' opposed application of 17 October 2018 for a Preparation Time Order against the claimant, the Tribunal, acting in terms of **Rules 75 to 79 of the Employment Tribunals Rules of Procedure 2013**, decides that the respondents' application is **refused,** as the Tribunal is not satisfied that the claimant's failure to attend, or be represented, at the Case Management Preliminary Hearing on 17 October 2018, due to her non-receipt of the Notice of that Preliminary Hearing, constitutes unreasonable conduct by the claimant.

(4) In respect of the remaining monetary claims outstanding against the respondents, the Tribunal **orders** that the case shall proceed to a Final Hearing, for full disposal, including remedy if appropriate, time estimate 1 day, before an Employment Judge sitting alone at the Glasgow Employment Tribunal, on a date to be hereinafter fixed by the Tribunal, in **April or May 2019,** after both parties complete and return date listing stencils to the Tribunal, as issued to them along with this Judgment.

REASONS

Introduction

1. This case called before me on the morning of Thursday, 14 March 2019, at 10.00am, for a Reconsideration Hearing assigned by the Tribunal by Notice of Hearing (Reconsideration of Judgment) issued to both parties under cover of a letter from the Tribunal dated 3 January 2019.

2. On 15 December 2018, I had decided, having considered parties' correspondence dated 30 November and 7 December 2018, that the claimant's application for reconsideration of the Tribunal's Judgment issued on 13 November 2018 should be determined at a Reconsideration Hearing in March 2019.

3. The Reconsideration Hearing was allocated 1 day for its full disposal, and parties were advised that, at the Hearing, the Tribunal's Judgment issued on 13 November 2018 might be confirmed, varied or revoked and, if it was revoked, the case would be re-listed for a Hearing at a future date.

Claim and Response

4. Following ACAS Early Conciliation between 7 June and 7 July 2018, the claimant, acting on her own behalf, presented her ET1 claim form to the Tribunal on 13 July 2018.

5. Arising from her former employment with the respondents as a customer assistant, between 27 April 2017 and 21 May 2018, the claimant complained of having been unfairly dismissed by the respondents, and being owed notice pay, holiday pay, and other payments, and she complained of having been wrongfully dismissed, while on sick leave, with no warnings and no disciplinary procedure followed by the respondents.

6. Her claim was accepted by the Tribunal, on 18 July 2018, and a copy served on the respondents, requiring them to lodge an ET3 response by 15 August 2018.

7. On 10 August 2018, an ET3 response form was submitted by Mr Farhan Rana, director with the respondents, resisting the claim and, as regards the complaint of unfair dismissal, advising that the claimant does not qualify for unfair dismissal due to being in service under two years. That response was accepted by the Tribunal, on 22 August 2018, and a copy sent to the claimant and ACAS.

Initial Consideration, and Case Management Preliminary Hearing

8. On 25 August 2018, Employment Judge Lucy Wiseman considered the file and ordered that the claim would proceed to a Case Management Preliminary Hearing to be fixed to clarify the complaints being pursued by the claimant, in circumstances where the claimant did not have qualifying service to bring a claim of ordinary unfair dismissal and, as it was not clear, whether the claimant was bringing a complaint of disability discrimination. In the Tribunal's

letter to both parties, dated 25 August 2018, they were advised that Notice of Case Management Preliminary Hearing would be issued to them in due course.

9. That Initial Consideration letter was issued to both parties by post. When the Notice of Preliminary Hearing (Case Management) was thereafter issued, to both parties, on 29 August 2018, it was sent to them by email, to the email addresses shown on the ET1 claim form for the claimant, and the ET3 response form for the respondents.

10. By Notice dated 29 August 2018, the Tribunal directed that there should be a Case Management Preliminary Hearing held on Wednesday, 17 October 2018, at 2.00pm, with one hour set aside for that Preliminary Hearing.

11. When the case called before me on 17 October 2018, for that listed Case Management Preliminary Hearing, the claimant was not in attendance, nor represented, and attempts by the Tribunal clerk to contact her, were unsuccessful, and, in those circumstances, the respondents being present, and represented, and ready to proceed, the Preliminary Hearing proceeded in the absence of the claimant.

12. Having heard from the respondents' representatives, Mr Mohammed Farhan (director) and Mr Shabaz Ahmed (manager), I dismissed the unfair dismissal complaint, as the claimant did not have qualifying service of two year's continuous employment, as required by **Section 108 of the Employment Rights Act 1996.**

13. Further, on account of her failure to attend or be represented, I took the view that the claimant was not actively pursuing her claim in respect of her other complaints of being owed notice pay, holiday pay, and other payments, and so, in terms of **Rule 37 of the Employment Tribunal Rules of Procedure 2013,** I ruled that had I not dismissed her claim for her failure to appear or be represented at that Preliminary Hearing, I would have considered striking it out for her failure to actively pursue her claim.

14. In my Judgment dated 19 October 2018, but not entered in the register and copied to parties until 13 November 2018, due to administrative delay by the Tribunal staff, I made it clear that, subject to the claimant's right to seek a reconsideration of the Judgment, in the interests of justice, these proceedings were at an end, subject only to determination of an application made orally at that Preliminary Hearing by the respondents for a Preparation Time Order to be made against the claimant in the sum of **£228** to be awarded to the respondents.

15. My Judgment stated that further procedure on that application would be determined by me, after the expiry of 14 days from date of issue of that Judgment, and I ordered the claimant to submit a written reply to the respondents' application, making any comment or objection that she felt appropriate.

Claimant's Application for Reconsideration

16. Having received the Tribunal's letter dated 13 November 2018, enclosing the Tribunal's Judgment dated 19 October 2018, the claimant replied to the Glasgow Tribunal office, but not copied to the respondents, as follows: -

> ***"Hi, I have received a letter from the employment tribunals scotland which says I have not attended my hearing and I am deeply devastated about this. I was unaware I had a date for my case as I have received two letters stating that they will send me a date and I had not heard back as to where I was to go. I was under the impression that I was still waiting on the date being set and then I received this letter. It also says that your office has tried to call me and I cannot recall ever getting this phone call. I have all my notes ready for the trial so the last thing I wanted to do was miss it. I had everything prepared as I wanted to pursue my claim and had no intentions of not following it up."***

Respondents' Objection

17. On 27 November 2018, the claimant's email of 16 November 2018 was referred to me. It had been submitted in time, being submitted within 14 days of the date that the Judgment was sent to parties, and it set out why the claimant felt a reconsideration was necessary, but it had not been copied to the respondents.

18. As the claimant had not sent it to the respondents, as required by **Rule 92 of the Employment Tribunal Rules of Procedures 2013**, I directed that a copy of her application be sent to them when the Tribunal wrote to both parties, on 29 November 2018. In that letter, parties were advised that having considered the claimant's correspondence of 16 November 2018, I had not refused her application for reconsideration, on initial consideration, and I directed that the respondents should provide any response to her application by 10 December 2018, copying it to the claimant and inviting both parties to express a view as to whether the reconsideration application could be determined without a Hearing.

19. In response to that letter from the Tribunal, Mr Farhan Rana, from the respondents, emailed the Tribunal, on 30 November 2018, but did not copy in the claimant, as required under **Rule 92**, stating that:

> "***I would like to express my disappointment at the way in which the claimant has handled this matter. The fact that their own telephone number was provided by them to the Tribunal's office leaves me shocked as to how they have not received any telephone calls or voice messages. In addition to this, we have received all paperwork and acted upon correspondence as required. As mentioned in the last correspondence by Judge McPherson, we did attend the Tribunal where multiple attempts were made to contact the claimant. In addition to this, we spent time and money in making ourselves and all relevant documentation available for the case.***
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> ***I understand that the Tribunal reconsideration is in the hands of the Employment Judge, but I feel that the way in which the***

claimant has dealt with this is unfair and I feel that with all evidence and the discussion with Judge McPherson, the matter should have been closed. This is because of my high level of respect for Judge McPherson's decision."

Claimant's Clarification of her Claim before the Tribunal

20. By email to the Tribunal on 7 December 2018, and copied to the respondents, the claimant attached a letter dated 6 December 2018, where she clarified that:

> "***I do not wish to bring a complaint of disability discrimination and I am aware I do not have qualifying service to bring a claim of ordinary unfair dismissal. I am simply pursuing the money which I am owed…. I have copies of my bank statements which shows I have not been paid the money I am owed. The dates that they have stated they have paid me are not even on my statements. As for withholding money due to the fact I have not handed in my uniform when I handed my uniform back shortly after my employment was terminated as I obviously had no further use for it. The shop has got a history of not paying former employees their final wages and I expected I would have hassle getting what I am owed which is why I turned to ACAS for advice and help on what I am owed."***

21. Parties' correspondence dated 30 November and 7 December 2018 having been referred to me, by letter to both parties from the Tribunal, dated 13 December 2018, parties were advised that the claimant's application for reconsideration would be determined at a Reconsideration Hearing, and that, within 14 days, the claimant was directed to write to the Tribunal, with a copy to the respondents, saying why she feels it is in the interests of justice to revoke the Tribunal's Judgment issued 13 November 2018.

22. She was also asked to clarify whether she sought variation or revocation of that Judgment, other than dismissal of her unfair dismissal complaint where her email of 7 December 2018 acknowledged that she did not have qualifying

service. It seemed that she wished to pursue the claims for being owed notice pay, holiday pay and other payments, and she was asked to confirm, and she was also asked to clarify whether she contested the respondents' application for a Preparation Time Order, as her email of 16 November 2018 did not clarify her position in that respect.

23. In response to the Tribunal's letter of 13 December 2018, emailed to her, the claimant replied to the Glasgow Tribunal office, by email on 31 December 2018, but again without copying to the respondents, as per **Rule 92**, stating as follows: -

> ***"I am willing to attend the reconsideration hearing in March 2019 as it was never my intention to miss the hearing. As I have already explained I did not receive any letter as to when I was to attend the hearing. I have spent the last 5 months preparing for it so there is no reason why I would not attend. I do not see why the respondents should be granted a Preparation Time Order as it is their fault I am in this position and have to spend all this time trying to get the money that they owe me. I simply wished to receive the money I was owed and move on which was what I was trying to do after I was dismissed. Their calculations for the Preparation Time Order makes no sense either due to the fact they shouldn't have had to spend that long if the evidence was already there. It also says that they have travelled from Dumfries to Glasgow when neither of the respondents stay in Dumfries and is in fact Kilmarnock which should take half the time to travel to Glasgow.***
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> ***I have spent so long trying to get what I am owed and it is stressful trying to address all of the respondents unnecessary lies that I do not know how to go forward in this situation. It should not have happened to me in the first place and feel there is no justice for someone like me but more justice for a bad employer. I attached my bank statements to my previous email.***

I do not know what more I have to do to prove that I have not received the money I am due."

24. On 4 January 2019, the clerk to the Tribunal wrote to the claimant, with copy to the respondents, acknowledging the claimant's correspondence of 31 December 2018, inviting comment from the respondents by 11 January 2019. Parties were reminded that **Rule 92** requires that if they write to the Tribunal, they must copy their letter or email with all attachments to the other party in the proceedings and confirm to the Tribunal that they have done so. No response was thereafter received from the respondents.

Reconsideration Hearing

25. While listed to start at 10.00am, it was 10.17am, before this Reconsideration Hearing commenced. The claimant was in attendance, unaccompanied, and representing herself. Mr Mohammed Farhan, director, and Mr Shabaz Ahmed, manager, were both present, and Mr Farhan advised that, under his known name of Farhan Rana, he had lodged the respondent's ET3 response resisting the claim, but that, at this Reconsideration Hearing, the respondent's representative would be Mr Ahmed.

26. Despite the clear and unequivocal terms of paragraph 7 of the Notice of Hearing, issued to both parties on 3 January 2019, that they should ensure that they bought three copies, together with the originals, (i.e. four sets of documents in total) of every document which they considered relevant to their case and which they wished the Employment Judge to take into account, the claimant attended with a folder of miscellaneous papers, from which, in discussion with her, several were selected, and thereafter, together with some further documents provided by Mr Ahmed, copied by the Tribunal clerk, for use by the Tribunal, and both parties.

27. This Bundle, prepared under the Judge's direction, included the claimant's P45 from the respondents, copy payslips for weeks 1 to 7, the respondents' banking record in relation to the claimant, a copy of the ET3 paper apart lodged with the respondent's ET3 response, a typewritten note by the claimant, clarifying that she was seeking a total of **£421.43** from the

respondents(made up as follows: 1 week SSP £60.41 (4 May – 11 May); 1 week notice pay £251.40 (18 – 25 May); and two days holiday pay £109.62); and pages 2 to 7 of the claimant's bank account statement no. 30 dated 28 June 2018.

28. The claimant stated that she had never received a P45 from the respondents, and she queried why the copy provided to the Tribunal by Mr Ahmed, after an adjournment to allow him to contact the company accountant and have it emailed to the Tribunal, was dated 14 March 2019. Further, she stated, she had never received the seven payslips now produced by the respondents.

29. In reply, Mr Ahmed stated that the P45 had been issued to the claimant, by the company's accountant, in the week following termination of her employment, on 21 May 2018, and that payslips had always been available for her, but that assertion was firmly denied by the claimant.

30. Mr Ahmed further stated that the respondents accept that the claimant is due **£87.61**, but that is subject to her returning her uniform to the company. He further accepted that, as part of that amount, she is due **£60.41** for statutory sick pay, but he denied any liability for notice pay, or holiday pay, as claimed by her.

Clarification of Issues before the Tribunal

31. Before proceeding to the Reconsideration Hearing itself, to consider the claimant's opposed application for reconsideration of my Judgment dated 19 October 2018, I sought to clarify with both parties the various outstanding matters before the Tribunal.

32. Under reference to the claimant's email of 7 December 2018, she confirmed that she accepted she does not have two years qualifying service to complain of ordinary unfair dismissal, and that part of her ET1 claim was therefore withdrawn by her, bringing that part of her claim to an end, and she also clarified that she was not bringing any complaint of unlawful disability discrimination against the respondents.

33. As both parties were self-representing, and accordingly they were not familiar with the Tribunal's Rules of Procedure, I spoke to the terms of **Rules 51 and 52,** and the claimant having confirmed orally withdrawal of her ordinary unfair dismissal claim, I granted a **Rule 52** dismissal judgment in favour of the respondents, in respect of that part of the claim only, but not in respect of a withdrawal of any disability discrimination claim, as no such claim had actually been brought in the original ET1 claim form. I orally granted that dismissal judgment in favour of the respondents, and I have now confirmed it, in this written Judgment.

34. Thereafter, the claimant confirmed that she was only now pursuing her money claims against the respondents, where she seeks two days holiday pay at **£109.62**, notice pay of **£251.40**, and statutory sick pay at **£60.41**. Under reference to her bank statements, she stated that she had not received payments of **£724.99**, as referred to in the respondent's ET3 response paper apart and she further stated that she had never had payslips from the respondents in the whole time she was employed by them.

35. In reply, Mr Ahmed stated that the claimant's payslips were posted out to her after her employment terminated, but he accepted that they were never issued to her during her employment, but they were always available if she had asked for them. When the claimant then stated that she had never got a P45 from the respondents, Mr Ahmed responded stating that it was issued to her, by post, within one week of her employment ending on 21 May 2018.

36. Although he did not have a copy to hand, I allowed an adjournment, during which he phoned the company's accountant, and the P45 was then emailed to the Tribunal, and copy provided to both parties, as also added to the Bundle. When the Bundle was copied by the Tribunal clerk, for the assistance of parties, and the Tribunal, the claimant stated that she had not previously seen either the copy payslips, or P45, until they had been produced at this reconsideration hearing.

37. By way of postscript, recording receipt of correspondence after this Hearing, I note and record here that, after the close of this Hearing, at 12:42pm on 14

March 2019, Mr Farhan Rana emailed the Tribunal, attaching a further copy of the P45 which was said to have been originally sent to the claimant, which he stated had been sent to the company by its accountant on 21 May 2018 and posted out to her on 23 May 2018.

38. As that was not copied to the claimant, in terms of **Rule 92**, the Tribunal clerk sent her a copy, seeking any comments by 22 March 2019. By email of 15 March 2018 at 11:17, Mr Rana sent the claimant a copy direct, as per the Tribunal's advice, and the claimant acknowledged safe receipt of that at 17:17 that same day, without making any further comment to the Tribunal.

39. At this Hearing, both parties confirmed to me that they had sight of the claimant's emails of 16 November 2018, 7 December 2018, and 31 December 2018, and Mr Rana's email of 30 November 2018, along with the ET1 and ET3, and that these were the relevant documents for my consideration, along with the documents now in the Bundle copied by the Tribunal clerk from both parties sets of productions.

40. In addition to the opposed reconsideration application, I stated that I would also wish to discuss with both parties the claimant's opposition to the respondents' application for a Preparation Time Order, as that matter remained outstanding.

41. I also enquired of them, if the Reconsideration Hearing could be concluded in the morning session, and an oral judgment given by me, having heard both parties on the opposed reconsideration application, whether we could then, if appropriate, proceed in the afternoon session to hear evidence in the case, from both parties, if I decided to revoke my previous dismissal of the whole claim, and allowed the claimant to seek to prove her case in respect of the remaining monetary claims against the respondents.

42. In discussion with both parties, I made enquiries as to their time estimates for witness evidence if the case was to proceed to a Final Hearing. Given both parties are not represented, I explained that it would be usual, in those circumstances, for the presiding Employment Judge to ask questions, in a

structured fashion, designed to elicit the information required by the Tribunal, and that the witness would then be cross examined by the other party.

43. The claimant confirmed that she would be the only witness on her own behalf, and Mr Ahmed stated that he would be a witness for the respondents, but possibly also Mr Rana. Both the claimant, and Mr Ahmed, estimated that they would need about one hour, to cross examine each other, and Mr Ahmed estimated that, if Mr Rana was to be led as a witness for the respondents, then he might take around thirty minutes to ask Mr Rana questions by way of eliciting his evidence in chief, and the claimant estimated perhaps another half hour to cross examine Mr Rana.

44. In the event, while the Reconsideration Hearing concluded at just after 12.15pm, and I had suggested adjourning for lunch, and I would return with an oral judgment on the opposed reconsideration application which, if appropriate, the Tribunal could proceed to a Final Hearing with evidence from both parties on the disputed monetary claims, that did not come to pass.

Judgment Reserved

45. Unfortunately, Mr Ahmed advised the Tribunal that there had been a death in the family, and he needed to be away by 1.00pm. He explained that his uncle had passed away, overnight ,following a terminal illness, and he had been at the hospital overnight, and although he had been home for a few hours, he invited the Tribunal to make a reserved ruling on the reconsideration application and, if the case was to be allowed to proceed, to relist it for another date sometime from the last week of April into the second week of May.

46. Understandably, the claimant stated, in reply, that she would rather get on with it at this hearing, given it had been listed for a full day, and she commented that her case had dragged on long enough, but when Mr Ahmed stated that he needed to be away to be with his parents, the claimant stated that if he couldn't stay, we could not force him to stay, and it was a matter for the Tribunal.

47. In all the circumstances, I stated that I would reserve my Judgment on the opposed reconsideration application, and also on the opposed Preparation Time Order application, and if the case was to proceed to a Final Hearing, it would be relisted by use of date listing stencils issued by the Tribunal staff to both parties for a date in April/May 2019.

Parties' Submissions on the Reconsideration Application

48. The claimant stated that she sought reconsideration for the reasons explained in her email of 16 November 2018 as also her further emails of 7 and 31 December 2018. In particular, she explained that she sought to be allowed to pursue her monetary claims, having withdrawn her ordinary unfair dismissal complaint against the respondents, and she further stated that she objected to a Preparation Time Order being made against her, and she wanted the Tribunal to find in her favour with a Judgment against the respondents for **£421.43**.

49. Mr Ahmed, for the respondents, stated that they resisted the reconsideration application, and he asked the Tribunal to keep the Judgment from 19 October 2018, and make a Preparation Time Order against the claimant. He accepted that the claimant is owed **£87.61**, and that would be paid if she returned her uniform to the company.

50. Explaining her non-appearance at the Case Management Preliminary Hearing on 17 October 2018, the claimant stated that she did not receive the Notice of that Preliminary Hearing issued on 29 August 2018, and while she accepted that notice had been emailed to her, at her correct email address, at 14:15pm on that date, she stated that she did not receive that email, or else she would have been there at the Tribunal on 17 October 2018.

51. She insisted that she had received the hard copy letter from the Tribunal dated 25 August 2018, and it was in her pack of papers, and it referred to a further letter being issued "***in due course***". She candidly admitted that she did not make any enquiry of the Tribunal about what was happening, as she just thought things would just take a while, and she did not know how long these things should take to happen. As stated in her email, seeking the

reconsideration, on 16 November 2018, she stated that she was "***devastated***" to learn the Tribunal had dismissed her claim in her absence.

52. Conscious that neither party was legally represented, and that they would not necessarily be familiar with the Tribunals Rules of Procedure, I drew to their specific attention the terms of **Rule 70 of the Employment Tribunal Rules of Procedure 2013**, and 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".***

53. In reply, the claimant stated that she had never intended to miss her Hearing before the Tribunal, and she had put effort into getting what she is due, and that she wants justice for herself, and the monies owed to her. While the respondents had stated that they accept **£87.61** is due to her, the claimant pointed out that sum had never been paid to her at any time since it was mentioned in the respondents' ET3 response, and that she will do whatever it takes to get her due monies back from the respondents.

54. Further, added the claimant, she wants her chance to get justice for herself, and she described it as being a hard year for her, and she has been stressed and on medication. She stated further that she wants the opportunity to prove to the Tribunal that sums are due to her, and that the respondents should be ordered to pay those sums to her.

55. By way of the respondents' opposition to the claimant's reconsideration application, Mr Ahmed stated that the respondents remain opposed to the claimant's application, and they ask the Tribunal to stick with the decision it made in October 2018, when the claimant did not attend the earlier Preliminary Hearing.

56. Mr Ahmed referred to Mr Rana's email to the Tribunal of 30 November 2018 and submitted that it is not in the interests of justice to let the claimant have the opportunity to prove her case. She had an earlier opportunity given, with ample notice, for 17 October 2018, and it was her case, and she did not turn up on 17 October 2018, and he found that "***shocking"***.

57. Accepting that the respondents owe the claimant **£87.61,** if she returns her uniform (a fact disputed as between the parties), Mr Ahmed further stated that the case should not be opened up beyond that, and the claimant was obliged to return her uniform, which he stated was part of a verbal agreement with her.

58. When he then stated that the claimant had been presented with a written contract at the start of their employment, albeit nothing had been signed by her, the claimant interjected to dispute that, and she stated that she never got any written particulars of employment from the respondents, and she was never told anything about returning her uniform, which failing a deduction would be made from her wages.

59. While that matter was not being considered at this Reconsideration Hearing, I suggested to both parties that, if the case were to be allowed to proceed to a Final Hearing, then they both should refer to the precise terms of **Section 13 of the Employment Rights Act 1996** (the right not to suffer unauthorised deductions from wages).

60. I further noted that, if there were written particulars of employment, and provisions about deductions from wages in certain circumstances, then they should have been produced to the Tribunal to consider at this Hearing. Mr Ahmed stated there were, but they were in the shop office, and so he could not produce them at this Hearing. The claimant disputed his assertion in that regard, so again there is a disputed matter of fact here.

Parties' Submissions on the Preparation Time Order

61. In their response to the claimant's application for a Preparation Time Order, discussed at paragraphs 9 to 14 of my earlier Judgment and Reasons dated 19 October 2018, the claimant stated that she objected to the Preparation Time Order altogether, as per her email to the Tribunal of 31 December 2018, and she did not understand how the respondents had made their calculations set forth at paragraph 13 of the Reasons to that earlier Judgment of the Tribunal. In her view, it should not have taken them six hours, and she stated that she thought their time estimate was "***exaggerated".***

62. For the respondents, Mr Ahmed stated that he felt the Tribunal should make the Preparation Time Order, as sought before, as the respondents were presented with a claim which included a complaint of unfair dismissal, and they defended it, as indeed the other parts of the claim brought against them. The claimant had only withdrawn her ordinary unfair dismissal complaint after the Case Management Preliminary Hearing on 17 October 2018, and issue of the Tribunal's Judgment on 13 November 2018.

63. Mr Ahmed further submitted that six hours was a reasonable time, and had the claimant stated earlier that she was not pursuing her unfair dismissal complaint, then they would not have required to deal with that, but it had taken six hours to prepare and submit their response to her claim, and that was their reply to what was in her ET1 claim form.

Relevant Law: Reconsideration

64. I have reminded myself of the relevant provisions of **Rules 70 to 72** of the 2013 Rules which read as follows:

> ***Rule 70. A Tribunal may either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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 decision ("the original decision") may be confirmed, varied or revoked. If revoked it may be taken again.***
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> ***Rule 71. Except where it is made in the course of a hearing, an application for reconsideration 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.***

Rule 72(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……".

65. The 2013 Rules came into force on 29 July 2013 and introduced the new concept of reconsideration of judgments rather than a review of judgments as it was entitled under the previous 2004 Rules of Procedure. In the 2004 Rules there were five grounds on which a review could be sought and the last of the five was the single ground that now exists for a reconsideration under the 2013 Rules namely that the interest of justice render it necessary to reconsider.

66. I consider that any guidance on the meaning of "***the interests of justice***" issued under the 2004 Rules (and the earlier Rules) is still relevant to reconsiderations under the 2013 Rules. I also remind myself that the phrase "***in the interests of justice***" means the interests of justice to both sides. In that regard, I specifically remind myself of the guidance from the Employment Appeal Tribunal in **Redding v EMI Leisure Limited EAT 262/81** where it was stated: "***when you boil down what is said on (the claimant's) behalf, it really comes down to this: that she did not do herself justice at the Hearing, so justice requires that there should be a second Hearing so that she may now. Now "justice" means justice to both parties***".

67. I remind myself also of the comments made by the Employment Appeal Tribunal in **Fforde v Black EAT 68/80** where it was said that the words in the "***interests of justice***" do not mean: "***…. that in every case where a litigant is unsuccessful he is automatically entitled to have the Tribunal review it. Every unsuccessful litigant thinks that the interest of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the***

procedure involving a denial of natural justice or something of that order".

68. Further, I have also reminded myself of the guidance to Tribunals in **Newcastle upon Tyne City Council – v- Marsden 2010 ICR 743** and in particular the words of Mr Justice Underhill when commenting on the introduction of the overriding objective (now found in **Rule 2** of the 2013 Rules) and the necessity to review previous decisions and on the subject of a review:

> "***But it is important not to throw the baby out with the bath-water. As Rimer LJ observed in Jurkowska v Hlmad Ltd. [2008] ICR 841, at para. 19 of his judgment (p. 849), it is "basic" "… that dealing with cases justly requires that they be dealt with in accordance with recognised principles. Those principles may have to be adapted on a case by case basis to meet what are perceived to be the special or exceptional circumstances of a particular case. But they at least provide the structure on the basis of which a just decision can be made."***
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> ***The principles that underlie such decisions as Flint and Lindsay remain valid, and although those cases should not be regarded as establishing propositions of law giving a conclusive answer in every apparently similar case, they are valuable as drawing attention to those underlying principles. In particular, the weight attached in many of the previous cases to the importance of finality in litigation – or, as Phillips J put it in Flint (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry – seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final (subject, of course, to appeal").***

69. Further, I have considered the further guidance on the 2013 Rules from HH Judge Eady in the decision **Outasight VB Limited –v- Brown UKEAT/0253/14**. I have considered that guidance and in particular have noted what is said about the grounds for a reconsideration under the 2013 Rules:

> ***"In my judgment, the 2013 Rules removed the unnecessary (arguably redundant) specific grounds that had been expressly listed in the earlier Rules. Any consideration of an application under one of the specified grounds would have taken the interests of justice into account. The specified grounds can be seen as having provided examples of circumstances in which the interests of justice might allow a review. The previous listing of such examples in the old Rules - and their absence from new - does not provide any reason for treating the application in this case differently simply because it fell to be considered under the "interests of justice" provision of the 2013 Rules. Even if it did not meet the requirements laid down in Rule 34(3)(d) of the 2004 Rules, the ET could have considered whether it should be allowed as in the interests of justice under Rule 34(3)(e). There is no reason why it should then have adopted a more restrictive approach than it was bound to apply under the 2013 Rules".***

Relevant Law: Preparation Time Order

70. The relevant law here is to be found in that part of **Rules 74 to 84 of the Employment Tribunals Rules of Procedure 2013** dealing with such Orders, as also the "***overriding objective***" under **Rule 2**. I need not say anything further here, as I discuss the relevant Rules below in my discussion and deliberation on this aspect of the case before me.

Discussion and Deliberation: Reconsideration

71. I have carefully considered both parties' written and oral submissions, and also my own obligations under **Rule 2 of the Employment Tribunal Rules**

of Procedure 2013, being the Tribunal's overriding objective to deal with the case fairly and justly.

72. There is no dispute that my earlier Judgment dated 19 October 2018 is a Judgment as defined in **Rule 1(3) (b) of the Employment Tribunals Rules of Procedure 2013**. It finally disposed of the claimant's claim against the respondents.

73. On the test of ***"in the interests of justice",*** under Rule **70**, which is what gives this Tribunal jurisdiction in this matter, there is now only one ground for "***reconsideration***", being that reconsideration "***is necessary in the interests of justice***." That phrase is not defined in the **Employment Tribunals Rules of Procedure 2013,** but it is generally accepted that it encompasses the five separate grounds upon which a Tribunal could "***review"*** a Judgment under the former **2004 Rules**.

74. While there are many similarities between the former and current Rules, there are some differences between the current **Rules 70 to 73** and the former **Rules 33 to 36**. Reconsideration of a Judgment is one of the two possible ways that a party can challenge an Employment Tribunal's Judgment. The other way, of course, is by appeal to the Employment Appeal Tribunal.

75. **Rule 70** confers a general power on the Employment Tribunal, and it stands in contrast to the appellate jurisdiction of the Employment Appeal Tribunal ("***EAT***"). In most cases, a reconsideration will deal with matters more quickly and at less expense than an appeal to the EAT.

76. In considering this reconsideration application, I have taken into account the helpful judicial guidance provided by Her Honour Judge Eady QC, EAT Judge, in her judgment delivered on 19 February 2018, in **Scranage v Rochdale Metropolitan Borough Council [2018] UKEAT/0032/17**, at paragraph 22, when considering the relevant legal principles, where she stated as follows (underlining is my emphasis): -

> ***"The test for reconsideration under the ET Rules is thus straightforwardly whether such reconsideration is in the interests***

of justice (see Outasight VB Ltd v Brown UKEAT/0253/14 (21 November 2014, unreported). The "interests of justice" allow for a broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to 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."

77. **Outasight VB Ltd v Brown** is, of course, an earlier EAT authority **[2014] UKEAT/0253/14**, now reported at **[2015] ICR D11**, also by HHJ Eady QC, where at paragraphs 27 to 38, the learned EAT Judge reviewed the legal principles. The EAT President, then Mr Justice Langstaff, in **Dundee City Council v Malcolm [2016] UKEATS/0019-21/15**, at paragraph 20, states that the current Rules effected no change of substance to the previous Rules, and that they do not permit a claimant to have a second bite of the cherry, and the broader interests of justice, in particular an interest in the finality of litigation, remained just as important after the change as it had been before.

78. Further, I have also taken into account the Court of Appeal's judgment, in **Ministry of Justice v Burton & Another [2016] EWCA Civ.714**, also reported **at [2016] ICR 1128**, where Lord Justice Elias, at paragraph 25, refers, without demur, to the principles "***recently affirmed by HH Judge Eady in the EAT in Outasight VB Ltd v Brown UKEAT/0253/14."***

79. Further, at paragraph 21 in **Burton**, Lord Justice Elias had stated that:

"An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see Rule 70 of the Tribunal Rules. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J, as he was, pointed out in Newcastle on Tyne City Council v Marsden [2010] ICR 743, para. 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law

cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily…"

80. Having heard from both parties, and having had time for private deliberation on their competing arguments, I have now reconsidered my earlier Judgment of 19 October 2018, and decided that it is in the interests of justice that it should be revoked, but only as regards paragraph (3) of that Judgment, dismissing her claims for monetary complaints, on account of her failure to appear or be represented on 17 October 2018.

81. While I then took the view that the claimant was not actively pursuing her claim in respect of those complaints, I am now satisfied that she does, and always has, sought to actively pursue those complaints against the respondents as her former employer. Accordingly, it is in the interests of justice that she should be allowed to pursue those claims at a Final Hearing, where the Tribunal can determine the matter having heard evidence from both parties.

82. It would be contrary to the interests of justice not to allow her the opportunity to seek to prove her case against the respondents. The prejudice to her, in refusing her application, far exceeds any prejudice to the respondents. They retain the right to dispute her claim, and lead evidence in resisting it.

83. The claimant was awaiting further correspondence from the Tribunal advising her of the date fixed for the Case Management Preliminary Hearing. She had received the hard copy, posted Initial Consideration letter of 25 August 2018, but not, she stated, the Notice of Hearing issued a few days later, by email, on 29 August 2018, to both parties assigning Wednesday, 17 October 2018.

84. She stated that she did not receive that email from the Tribunal, sent at 14:15 pm that afternoon, 29 August 2018. From the casefile, I could see it had been emailed to her by a clerk, Laura Riley. That email was sent to her at the email address provided by her in her ET1. The respondents had received it, and they had attended the Tribunal on 17 October 2018.

85. Notwithstanding the passage of time, from 25 August 2018 until her email to the Tribunal on 16 November 2018, when she applied for reconsideration of my earlier Judgment, the claimant had not been in contact with the Tribunal, enquiring about her case.

86. **Rules 86 and 90 of the Employment Tribunals Rules of Procedure 2013** provide as follows:

> ***DELIVERY OF DOCUMENTS***
>
> ***Delivery to parties***
>
> ***86.— (1) Documents may be delivered to a party (whether by the Tribunal or by another party) –***
>
> ***(a). by post;***
>
> ***(b). by direct delivery to that party's address (including delivery by a courier or messenger service);***
>
> ***(c). by electronic communication; or***
>
> ***(d). by being handed personally to that party, if an individual and if no representative has been named in the claim form or response; or to any individual representative named in the claim form or response; or, on the occasion of a hearing, to any person identified by the party as representing that party at that hearing.***
>
> ***(2) For the purposes of sub-paragraphs (a) to (c) of paragraph (1), the document shall be delivered to the address given in the claim form or response (which shall be the address of the party's representative, if one is named) or to a different address as notified in writing by the party in question.***
>
> ***(3) 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.***

Date of delivery

90. Where a document has been delivered in accordance with rule 85 or 86, it shall, unless the contrary is proved, be taken to have been received by the addressee –

(a) if sent by post, on the day on which it would be delivered in the ordinary course of post;

(b) if sent by means of electronic communication, on the day of transmission;

(c) if delivered directly or personally, on the day of delivery.

87. While I was satisfied that the Tribunal staff had sent the claimant that Notice of Hearing on 29 August 2018, the Tribunal administration does not use read receipts routinely, so there was no read receipt on file, and no follow up correspondence from the claimant. While another claimant may well have enquired of the Tribunal sooner, as to what was happening about listing their case for a Hearing, this claimant did not do so. It is a step too far, I think, to describe that as unreasonable conduct on her part.

88. As an unrepresented, party litigant, with no previous experience of the Tribunal or its practices and procedures, I could not regard her failure to attend the listed Hearing on 7 October 2018 as wilful disobedience to an order or direction of the Tribunal, nor as vexatious or otherwise unreasonable conduct on her behalf. Her absence was disruptive, to a limited extent, while enquiries were made by the Tribunal clerk trying unsuccessfully to contact her, but the Hearing was able to proceed in her absence.

89. As such, after carefully considering matters, I have decided that the claimant has met the test of showing, in light of her statements to the Tribunal, that the email of 29 August 2018, which addressed to her and sent had not been received by her, and thus the Hearing on 17 October 2018 took place without her knowing that that date had been set.

90. The further fact that her email of 16 November 2018, seeking reconsideration, refers to her being "***deeply devastated***" lends weight to her failure to attend being due to no Notice of the Hearing, rather than her acting in some way to harass or spite the respondents as her former employer.

91. Otherwise, I have confirmed my earlier Judgment of 19 October 2018, as my dismissal of her unfair dismissal complaint, at paragraph (2) of my Judgment, on account of her lack of qualifying service, remains appropriate, the claimant having herself since conceded that point, and withdrawn that part of her claim, which I have now dismissed under **Rule 52**.

92. On the information then available to the Tribunal, it was appropriate to proceed, in the claimant's absence, on 17 October 2018, in terms of **Rule 47**, and there is no reason now to revoke or vary that paragraph (1) of my Judgment.

93. Likewise, it is not appropriate now to vary or revoke paragraphs (4) to (7) of that earlier Judgment, as they advised the claimant of her right to seek a reconsideration, a right which she then exercised on 16 November 2018, and further procedure as regards the respondents' application for a Preparation Time Order.

Discussion and Deliberation: Preparation Time Order

94. Having heard from both parties, and having had time for private deliberation on their competing arguments, including taking account of the overriding objective, I have now decided that the respondents' application for a Preparation Time Order against the claimant must be refused, as I am not satisfied, having heard from her in person at this Reconsideration Hearing, that her failure to attend, or be represented, at the Case Management Preliminary Hearing on 17 October 2018, due to her non-receipt of the Notice of that Preliminary Hearing, constitutes vexatious or otherwise unreasonable conduct by the claimant.

95. As the respondents have not met the threshold, in **Rule 76(1)(a),** of satisfying me that the claimant has acted vexatiously, abusively, disruptively or

otherwise unreasonably in either bringing the proceedings or in the way that she has conducted them, the matter of the amount of an award for the respondents' preparation time , assessed in terms of **Rule 79**, does not now fall for consideration by me.

96. Had the respondents satisfied me that there had been unreasonable conduct by the claimant, I have to say that I would have regarded the 6 hours claimed by the respondents as fair and reasonable, and I cannot accept the claimant's assertion that that amount of preparation time was exaggerated.

97. They were responding to the claims then against them, as the claimant raised in her ET1 claim form, and that included a complaint of unfair dismissal, which they resisted. The fact that the claimant has since withdrawn that head of claim does not mean that the respondents did not spend preparation time on that aspect of the case brought against them.

98. Further, had I required to make an award, I had no information before me, from the claimant, to assess, in terms of **Rule 84**, her ability to pay the sum of **£228** sought by the respondents. As such, I would have awarded them that full amount.

Further Procedure: Final Hearing

99. Given my decision to allow the reconsideration application, in part, I have consequentially ordered that in respect of the remaining monetary claims outstanding against the respondents, the case shall proceed to a Final Hearing, for full disposal, including remedy if appropriate, time estimate 1 day, before an Employment Judge sitting alone at the Glasgow Employment Tribunal.

100. That Final Hearing will be on a date to be hereinafter fixed by the Tribunal, in **April or May 2019,** after both parties complete and return date listing stencils to the Tribunal, as issued to them along with this Judgment. If available, I can take that Final Hearing, but if not, it can be heard by any Employment Judge sitting alone.

101. For that Final Hearing, the Tribunal will use the Bundle of Documents produced at this Reconsideration Hearing, and now held on the casefile. If either party has any further documents on which they intend to rely at the Final Hearing, then they shall intimate them to the other party **no less than 14 days before the start of that Final Hearing** and bring **3 additional hard copies** to the Tribunal for use at that Final Hearing.

Employment Judge: Ian McPherson

Date of Judgement: 22 March 2019

Entered in Register,

Copied to Parties: 22 March 2019