



# EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4110355/2019

Reconsideration application decided in Glasgow on 8 January 2020

Employment Judge M Whitcombe

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Miss M Szalek

Claimant

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Pure Cleaning (Scotland) Ltd

Respondent

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## RECONSIDERATION

Employment Tribunal Rules of Procedure 2013

Rule 19(3)

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1. The respondent's application for a reconsideration of my decision on 4 October 2019 to reject the response on the basis that it was late is dismissed, both on its merits and also because the reconsideration application was itself made out of time.
2. This decision was made without a hearing in accordance with rule 19(3) of the ET Rules of Procedure 2013.

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## REASONS

3. By a claim form submitted on 21 August 2019 the claimant seeks payment of accrued holiday pay entitlement outstanding on the termination of her employment.
  
- 5 4. In accordance with rule 15 of the ET Rules of Procedure 2013 the Tribunal administration sent that claim form to the respondent under cover of a letter dated 27 August 2019. The letter also enclosed the mandatory prescribed response form and an explicit reminder that the response must be received at the Tribunal office by 24 September 2019, the period specified by rule 16(1).  
10 The letter also explained that the respondent could apply for an extension of the time to submit the response if it applied in writing setting out the reason why the extension was sought.
  
- 15 5. Neither a response nor any application for an extension of time for submission of a response was received by the deadline of 24 September 2019.
  
6. A response was received on 1 October 2019, 7 days outside the specified period. It was not accompanied by an application for an extension of time. It was not accompanied by any explanation for the lateness.  
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7. I decided to reject the response under rule 18 because it was late and because there was neither any application for an extension of time nor an acceptable explanation for the lateness which I might have treated as an implicit application for an extension of time. The Tribunal administration recorded my decision in a standard letter dated 4 October 2019. In the normal way, that  
25 letter reminded the respondent that the deadline for any application for a reconsideration of the decision to reject the response was within 14 days of the date of the letter.
  
- 30 8. The respondent made an application for reconsideration of the decision to reject the response in a letter bearing the date 18 October 2019. However, it was received by the Tribunal on 22 October 2019, outside the time limit for seeking a reconsideration.

9. I dismiss the application for a reconsideration of my decision to reject the response both because the application for reconsideration was itself out of time and also because it is not well-founded on the merits anyway. I would have  
5 rejected it for either of those alternative reasons.

a. The reconsideration application was made on 22 October 2019, several days outside the 14 day time limit in rule 19(2).

10 b. There was neither any application for an extension of the period prescribed by rule 19(2) nor any explanation for the lateness of the reconsideration application itself. I therefore decline to extend the normal 14 day time limit derived from rule 19(2), and the reconsideration application would be dismissed for that reason alone.

15 c. Further, I would have dismissed the application on its merits anyway. The only explanations put forward for the failure to submit a response by the relevant deadline are that the respondent was in discussions with the claimant through ACAS “in order to establish facts relating to her claim”, and the respondent’s expectation that matters would be resolved through conciliation and go no further. Those are poor and  
20 unacceptable reasons for failing to comply with clear and important litigation deadlines. I also note that the latest date on which ACAS are said to have acted was 12 September 2019. In fact I have found an email from ACAS referring to having “reached an impasse” dated 13 September 2019. That still left 11 or 12 days in which to submit a  
25 response.

d. Further, the above failures to comply with deadlines occurred despite clear reminders in Tribunal correspondence. There is nothing to suggest that the respondent was reasonably ignorant of the relevant dates.

30 e. In summary, I am not satisfied that the original decision to reject the response was wrong and the application for reconsideration is therefore dismissed for that reason too.

10. This claim will therefore proceed to a final hearing with a time allocation of 1 hour. Rule 21(3) will apply. The extent of the respondent's participation is a matter for the judge conducting that hearing, but Court of Appeal authority (including ***Office Equipment Limited v Hughes*** [2018] EWCA Civ 1842) makes it clear that a respondent should normally be able to participate on issues of remedy.

Employment Judge:

M Whitcombe

10 Date of Judgement:

08 January 2020

Entered in Register,

Copied to Parties:

09 January 2020