



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs H Mahajuodeen  
**Represented by:** Mr M Singh, Counsel

**Respondent:** Mills Family Ltd  
**Represented by:** Mr T Hussein, Employment Consultant

**Before:** Employment Judge K Andrews

**Preliminary Hearing held on 20 May 2020 at  
London South Employment Tribunal by telephone**

## JUDGMENT

### Rule 70 the Employment Tribunal Rules of Procedure 2013

1. The rule 70 Judgment dated 4 May 2020 has been reconsidered on the application of the claimant and revoked.
2. The rule 21 Judgment dated 11 February 2020 has been reconsidered on the application of the respondent and revoked.
3. Time for filing the response is extended to 12 March 2020.
4. A preliminary case management hearing to be heard by telephone with a time estimate of one hour is listed for 21 July 2020.

## REASONS

1. This matter has already been the subject of one reconsideration further to which I revoked the rule 21 Judgment dated 11 February 2020. That reconsideration Judgment was dated 4 May 2020 and sent to the parties on 11 May 2020.
2. When deliberating on that application, I took into account that the respondent had, on 6 April 2020, put the claimant on notice of the application and advised them to send any comments to the Tribunal within 7 days. By 4 May, when I was deliberating, no such comments had been received. Comments were then received from Counsel for the claimant on

7 May 2020 setting out reasons why the rule 21 Judgment should not be revoked together with copy authorities. I did not become aware of those submissions until today's hearing.

3. On 12 May 2020, having received the first reconsideration Judgment on 11 May 2020, the claimant applied for a reconsideration of it. In the meantime the matter had been listed for a telephone case management discussion to be heard today. The respondent filed its response to the claimant's reconsideration application on 19 May 2020.
4. As far as the first reconsideration Judgment is concerned (4 May 2020) I accept Mr Singh's submission that it was procedurally flawed as rule 72(1) of the Employment Tribunal Rules of Procedure 2013 require the Tribunal, if the application is not immediately refused, to send a notice to the parties setting out a time limit for any response to the application by the other party and seeking their views on whether it can be determined without a hearing. I considered whether it would be appropriate for me to use the general power in rule 6 to retrospectively waive that requirement given that the claimant had in fact been put on notice of the application albeit not by the Tribunal. On balance I decided to proceed somewhat cautiously and not take advantage of that power. Accordingly, I revoked the first reconsideration Judgment.
5. Accordingly, that put the case back into the pre-4 May 2020 state i.e. deciding anew the respondent's application for a reconsideration of the rule 21 Judgment. Both Mr Singh and Mr Hussein took the pragmatic and welcome view that it was appropriate for me to consider that application in this hearing which I proceeded to do. Both made helpful oral submissions as well as referring back to those already made in writing. Given the time and the also less than satisfactory telephone line, I reserved that part of my decision.
6. The relevant rules are as set out in rules 70-73 and I considered the authorities to which Mr Singh referred and Mr Hussein's comments on them.
7. It is clear that the starting point is the 'interests of justice' test set out in rule 70 - a broad discretion but one that must be exercised judicially. It requires a balancing of the interests of and prejudice to both parties as well as the public interest in the finality of litigation. When considering a failure by a party to comply with a requirement, the explanation for that failure will be highly relevant and whether it was full, honest and acceptable.
8. Until today the only explanation given by the respondent for the failure to file its ET3 in time was 'administrative oversight'. When I asked Mr Hussein today for more details he said that Croner, who are instructed by the respondent, operate from two central offices - one of which usually files ET3s - as well as by field consultants (of which he is one). At the relevant time changes were taking place in those offices and it was not clear who had responsibility for filing the ET3. Once the file had been sent to Mr Hussein at the start of March 2020, he made enquiries first with the office

and then with the Tribunal as to whether an ET3 had been filed as he could not see that it had. Once he realised that none had been filed he attended to it and made the application dated 12 March 2020.

9. Mr Singh says that this explanation is neither full nor acceptable (he does not say it is dishonest). He rightly points out that the detailed explanation was only given once I expressly asked for it today. He has also pointed to the authorities that - in the context of compliance or otherwise with the deadline for filing appeals in the EAT - say that oversight in the passing of a time limit does not excuse delay. (He also pointed to authorities that state it is inappropriate for the Tribunal to investigate the correctness or otherwise of a representative's actions but I note that that was in respect of the handling of a matter during a hearing rather than at a very preliminary stage such as this.)
10. Mr Singh made a strong case but on balance I do consider that the interests of justice require the rule 21 Judgment dated 11 February 2020 to once again be revoked. I acknowledge the prejudice to the claimant. She loses the benefit of that Judgment and it is right that she has done absolutely nothing wrong. The error here was all on the respondent's part. However, by revoking the Judgment she does not suffer irreparable prejudice - she is put back in the position that she must have expected i.e. having the opportunity to present her case to a full Tribunal in due course. Set against that is the prejudice to the respondent of not having the opportunity to present their defence to serious allegations as well as a potentially significant financial finding against them as well as potential reputational damage.
11. I agree with Mr Singh and acknowledge that rules are there for a reason, the importance of finality of litigation and that the respondent's representative, a professional organisation, has been slow to offer up the details of their administrative oversight. The details that have been given do not show them in a good light. However, I remain of the view that the interests of justice would not be properly served by the respondent not being given the opportunity to present its case in a matter which is still at the very early stages of its Tribunal life.
12. There is however a question of the additional costs that the claimant has undoubtedly been put to by the respondent's representative's failings. Mr Singh indicated that the appropriate application will be made at the next hearing.

Employment Judge Andrews  
Date: 21 May 2020