



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Jonusas

**Respondent 1:** Jackson Transport Solutions Limited  
**Respondent 2:** Rose Transport Limited (in liquidation)  
**Respondent 3:** Sofia Rose Limited

**Heard at:** Liverpool **On:** 3 July 2020

**Before:** Employment Judge Shotter (sitting alone)

## Appearances

For the claimant: Ms K Jonusas, claimant's daughter (law student)

For the respondents: Not in attendance

## JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that –

1. The default judgement promulgated on the 21 January 2020 is set aside.
2. With consent, all claims are dismissed against the third respondent who no longer has any interest in these proceedings.

## REASONS

1. Under Rule 70 of the Employment Tribunal Rules a judgement can be reconsidered where it is *necessary in the interests of justice* to do. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation and reconsiderations are a limited exception to the general rule that judgements should not be reopened and relitigated.
2. The Tribunal's discretion must be exercised judicially and with regard not just to the interests of the parties seeking the reconsideration, but also to the other parties, the requirement for finality to the litigation and giving effect to the overriding objective.

3. It is the Tribunal's view it is in the interest of justice to reconsider the Judgement promulgated on the 21 January 2020. A default judgment was made in the claimant's favour which requires a reconsideration in the light of the information gathered today, as the third respondent cannot have ever been the claimant's employer. Both the first and second respondent have submitted ET3 responses denying they ever employed the claimant.

4. It is apparent from the company searches that:

4.1 Sofia Rose Limited according to Ms Jonusas was not the claimant's employer. It is unlikely on the documentation given the fact the claimant's employment continued until 2 March 2019. There was an application to strike the company off the register on 8 November 2018, it appears that it has not been trading and the present status is that there is an active proposal to strike off. Accordingly, the default judgment against the third respondent promulgated on the 12 February 2020 is set aside on a reconsideration in a separate judgment.

4.2 Turning to the second respondent, Ms Jonusas confirmed Sofia Rose Transport Limited was originally the claimant's employer, and she believes when it went into liquidation the claimant's employment transferred under TUPE to the first respondent. The documents appear to bear this out. The Companies House search revealed the second respondent appointed a voluntary liquidator on the 13 December 2018. The claimant believes it was in or around this time he was informed his employment would be transferred to the first respondent and that it would not change in any way. In the second respondent's ET3 it is stated that the company ceased trading in September 2018 and that the company went into liquidation in November 2018. Accordingly, the default judgment against the second respondent promulgated on the 12 February 2020 is set aside on a reconsideration in a separate judgment.

4.3 The claimant was employed from the 19 December 2018 until the 2 March 2019, and relies on a number of documents, including wage slips, which were before me today in their original form. On the face of the documents it appears the claimant was employed by the second respondent until in or around 12 October 2018 according to payslips and invoices. After that date there were no payslips, however, the claimant was sent invoices by the first respondent. It is the claimant's position that there was a TUPE transfer from the second to first respondent on some date in October/November/December 2018 and the claimant remained employed by the first respondent until the effective date of termination. The date of the TUPE transfer is a matter that should, if possible, be confirmed by the claimant to the Tribunal and first respondent, and the circumstances set out clearly within his witness statement.

5. The default judgment is set aside against the first respondent on the basis that it has put in a response and should have the opportunity to deal with the allegation that the claimant's employment transferred under TUPE. This step has been taken with the consent of Ms Jonusas who is representing the claimant.

6. In conclusion, the default judgement promulgated on the 21 January 2020 is set aside. With consent, all claims are dismissed against the third respondent who no longer has any interest in these proceedings.

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Employment Judge Shotter

DATE: 3.7.2020

ORDER SENT TO THE PARTIES ON  
16 July 2020

FOR THE TRIBUNAL OFFICE

**(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.**

**(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rules 74-84.**

**(3) You may apply under rule 29 for this Order to be varied, suspended or set aside Further Guidance**