Case number: 2600899/2020

EMPLOYMENT TRIBUNALS

BETWEEN:

Mrs C Ramsay **Claimant**	and	Cancer Research UK **Respondent**

Application for Reconsideration

Held at: In Chambers On: 16 September 2020

Before: **Employment Judge R Clark**

JUDGMENT

1. Time for presenting an ET3 response is extended to 28 August 2020. The draft response presented on that date is accepted.

2. The rule 21 judgment made on 3 July 2020 and sent to the parties on 20 July 2020 is **revoked**.

REASONS

1. On 3 July 2020 I issued a default judgment in favour of the claimant in the sum of £13,936.42 in accordance with rule 21 of schedule 1 of the Employment Tribunals

(Constitution and Rules of Procedure) Regulations 2013 ("the rules"). This was sent to the parties on 20 July 2020.

2. On 21 August, an HR representative of the respondent contacted the tribunal by email. The respondent's representative's actual knowledge of the claim appears then to have arisen only because the claimant had herself made contact with the respondent about the judgment. The respondent sought the claim paperwork and expressed concern that it might have been sent to the wrong address as it had recently moved its registered office.

3. In fact, on 7 March 2020, the claim had been served on the respondent's previous head office address, that is, the Angel Building address. No response was received and the matter considered for rule 21 judgment. No judgment was issued at that time as it was apparent to the tribunal that the registered address had changed and that the claim may not have properly come to the attention of the respondent. Accordingly, on 5 May 2020 the claim was reserved at its new registered address, that is the Redman Place address, and it was given until 2 June 2020 to file a response. On 6 June, no response having been filed, EJ Hutchinson sought details of the claimant's losses and directed that the matter be re-referred for consideration under rule 21 once received. The matter was again referred and eventually came before me on 3 July. Based on the information then before me, I entered the rule 21 judgment.

4. Within hours of the respondent's contact on 21 August 2020, Mischon de Raya LLP were appointed to represent it and a solicitor wrote applying, at this stage, for reconsideration of the rule 21 judgment. An application under rule 20 was not made at that stage it seems because the claim papers had not yet been resent and/or located by the respondent. The claimant's views were sought. On 26 August, the claimant set out her objections to the reconsideration, restating the chronology of the claim as she understood it, refuting what she understood to be an allegation she had deliberately given the wrong address for the respondent and objecting to the reconsideration, in particular that she had followed the rules correctly and she was being penalised for it not managing its administration. The process was having an adverse effect on her mental health.

5. On 27 August 2020, the respondent provided further information in support of its application. It explained the change of address, the post forwarding it had put in place to its new address. It had now located the claim papers which had remained unopened due to the offices closing in response to Covid-19. It criticised the claimant for not informally chasing the respondent although, of the various points raised by the respondent, I found that to carry no merit. Where its application does have considerable force, is the submission that there may be an error of law in the sum of compensation awarded within the rule 21 judgment as it appears to exceed the maximum cap of compensation in claims of unfair dismissal.

6. The following day, 28 August 2020, the respondent filed a draft response as part of an application under rule 20 of the rules for an extension of time to submit a response.

7. As an application for reconsideration, it falls to be considered under rules 70-72 of the rules. By rule 71, an application for reconsideration must be made in writing within 14 days of the decision being sent setting out why reconsideration of the original decision is necessary. The claimant's email application was submitted out of time. The reason for the delay stems from the lack of actual knowledge on the part of any representative of the respondents. I am satisfied that for the purposes of the time limit, it is appropriate to extent time for the application and there is certainly evidence of prompt action once the situation was known.

8. By rule 70, the tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand. By rule 72(1) I am to give initial consideration to the prospects of the application which determines whether it is necessary to seek the views of the respondent and whether the matter can be dealt with on paper or at a further hearing before the same tribunal. Where the application can be said to carry no reasonable prospects of being varied or revoked, the rules dictate that I shall refuse the application without being required to consider the matter further.

9. In this case I am satisfied that the issues are sufficiently clear that it is not proportionate to list a hearing and I can decide the matter on paper.

10. The judgment can be considered at two levels, that of liability and remedy. So far as remedy is concerned, if nothing else I am concerned that there may well be an error of law in the level of compensation awarded in the rule 21 judgment. That in itself is enough for me to revoke so much of the judgment of 3 July 2020 relating to remedy on the basis it is not only in itself in the interests of justice to do so, but the interests of justice are also served by avoiding the costs and delay to the parties of an appeal which would appear to have merit.

11. That then leaves the question of the liability part of the judgment. That is better considered as part of the further application under rule 20 for an extension of time for submitting the response, not least because rule 20 automatically deals with the consequential status of any 21 Judgment.

12. In its nature, this is an application for relief from sanctions. The rule 21 judgment, the liability part at least, is a valid or regular judgment. It was properly served on the respondent. It did not respond in time. It is not, therefore, entitled to have the liability judgment set aside as of right but seeks to persuade the tribunal to exercise its discretion to do so.

13. The exercise of that discretion must consider a number of factors. The first is whether there has been any delay on the part of the respondent when it did become aware of the claim. I am satisfied it did not delay and the applications have been made promptly, albeit they have evolved as it has come into possession of the details of the claim. I must then consider if there is a real, as opposed to fanciful, prospect of it successfully defending the claim. A realistic defence is one which carries some degree of conviction that is it is more than merely arguable. It does not have to be likely to succeed. I am satisfied the draft response filed meets this test. Mrs Ramsey should not interpret this conclusion as an assessment that the defence will succeed, or that her claim will fail. It is only that there is a proper and triable basis of dispute between the parties.

14. I then consider the seriousness of what has gone wrong, why it did and any other relevant factors. Not filing a response to a properly served claim is clearly a serious and significant

failure and is at the heart of what is now further delay to the conclusion of Mrs Ramsay's claim. It has also caused further Tribunal resources to be devoted to this case at the expense of other parties. The reason for that must be a good reason. The "oversight" in dealing with the second set of papers served on the correct address would not, in itself, be something I would regard as good enough reason in ordinary times. However, whilst the explanation is not without its questions as to what alternative systems ought to have been put in place, I am satisfied that the responses to the lock down, the need to reorganise business systems and the fact that 1200 staff were working for home provides the explanation for the failure which is understandable. The exercise boils down to the balance of hardship between the parties of allowing, or refusing, the application. That engages with the delay that Mrs Ramsay will suffer if the application is allowed and the further stress and anxiety that may be caused by that. I note the original final hearing listing of 8 July 2020 has clearly passed but it seems clear to me that, even if the respondent had entered a response, that date would have had to be postponed as it seems the revised case management orders issued on 5 May 2020 gave a timetable going beyond that date. Further, the fact that I am bound by my earlier conclusion to revoke the remedy part of the judgment in any event means the further delay and stress that Mrs Ramsay quite properly raises in her objection as wanting to avoid, cannot be avoided.

15. For those reasons I am satisfied that it is in the interest of justice to revoke the judgment in its entirety. To express my decision it in terms of rule 20, I am satisfied it is in the interest of justice to extend time for the presentation of the ET3 response to 28 August 2020. That will stand as the respondent's response. By rule 20(4), the judgment issued under rule 21 is automatically set aside.

16. Case management orders will follow separately.

.....

Employment Judge R Clark
Date: 16 September 2020

JUDGMENT SENT TO THE PARTIES ON

18/09/2020……

AND ENTERED IN THE REGISTER

……

FOR SECRETARY OF THE TRIBUNALS