



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms E Farrow

**Respondent:** LTE Group

**Heard at:** Manchester

**On:** 9 October 2020

**Before:** Regional Employment Judge Franey  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr T Wood, Counsel

# JUDGMENT

1. Upon reconsideration the judgment of 2 April 2020 striking out the claim for non payment of the deposit is revoked.
2. Under rule 5 time for payment of the deposit order made by Employment Judge Sherratt sent to the parties in writing on 3 January 2020 is extended from 31 January 2020 to 4 February 2020.
3. The deposit was paid within that extended period and the complaint of unfair constructive dismissal can proceed.

# REASONS

## Introduction

1. The “Code V” in the heading indicates that this was a hearing conducted by way of video conference call using the HMCTS Cloud Video Platform.
2. The claimant resigned from her employment as a Clinical Supervisor with the respondent in March 2019. On 8 May 2019 she presented a claim form bringing complaints of unfair dismissal and of disability discrimination. A response form of 30 August 2019 defended the claims.

3. The case was considered by Employment Judge Sherratt at a preliminary hearing on 6 December 2019. He struck out the disability discrimination complaints because they had no reasonable prospect of success. He made a deposit order in relation to the unfair dismissal complaint because he considered it had little reasonable prospect of success. The deposit order required payment of a deposit of £25 by 31 January 2020. The judgment and deposit order were sent to the parties by email on 3 January 2020.

4. The claimant did not pay the deposit by 31 January 2020. Her payment was received on 4 February 2020. Following correspondence between the parties this resulted in my judgment of 2 April 2020 confirming that the claim had been struck out because the deposit had not been paid within the time ordered.

5. The claimant applied for reconsideration of that judgment the same day. She provided further information in support of her application on 25 May. The respondent provided details of its objection to the application in a letter of 8 June 2020. The case was listed for a two hour reconsideration hearing before me today.

6. I had read the file prior to the hearing, including the written submissions made in advance by both parties. I heard oral evidence on affirmation from Ms Farrow. She answered my questions and those from Mr Wood. The respondent did not call any evidence but relied on its written submissions and additional oral submissions made by Mr Wood. Ms Farrow also summarised her case at the conclusion of the hearing.

### **Relevant Legal Framework**

7. The application for reconsideration was made under rule 70. That provides for a judgment to be reconsidered:

**“Where it is necessary in the interests of justice to do so.”**

8. An application for reconsideration is an exception to the general principle that a decision of an Employment Tribunal is final. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton [2016] EWCA Civ 714**.

9. The power to extend time arises under rule 5. Rule 5 confirms that time can be extended even if it has expired.

10. The powers under rule 70 and under rule must be exercised in accordance with the overriding objective in rule 2. That is to deal with cases fairly and justly. That includes, so far as is practicable, avoiding unnecessary formality and seeking flexibility in the proceedings, and avoiding delay, so far as compatible with proper consideration of the issues.

11. The Employment Appeal Tribunal confirmed in **Sodexho Ltd v Gibbons [2005] ICR 1647** that if a judgment striking out a claim for non payment of a deposit order is revoked upon reconsideration, the Tribunal can then exercise its case management power to extend time for payment retrospectively.

## Relevant Findings of Fact

12. I found the relevant facts to be as follows.

13. The claimant suffers from a range of conditions which affect her ability to deal with these proceedings. She has dyslexia and post traumatic stress disorder. She also has problems with her hip and spine which affect her mobility. She is unable to afford legal advice or representation and is reliant on state benefits.

14. The claimant attended the preliminary hearing on 6 December 2019 and was aware that she had to pay the deposit of £25 by 31 January 2020. She made a diary note of that deadline.

15. The claimant received the email of 3 January 2020 which had the deposit order attached as a pdf document, but was unable to open it at the time. I accepted her evidence that she has difficulties with attachments because both her computer and mobile phone are relatively old devices. I noted that she made this point in her email of 22 January 2020 (see below).

16. The claimant was intending to pay the deposit during January 2020 but sadly her mother became ill and died on 18 January 2020. Her mother lived in the Middle East. The claimant flew to Dubai on 22 January. She returned back to the UK on 30 January, arriving at Manchester Airport in the early evening of Thursday 30 January 2020.

17. During that period the claimant sent some emails to the tribunal and to the respondent. On 22 January she emailed to say that she was currently out of the country and would not be returning until 30 January. Her email mentioned her dyslexia and her difficulty in understanding legal protocols. She said that her PTSD had been exacerbated by recent events. Her email concluded with the following:

**“Any monies due and documentation required will be sent after my return and when I can open the attachment sent in your last email.”**

18. The respondent’s solicitor, Ms Guilding, responded on 23 January expressing her condolences and offering an extension for the Schedule of Loss which was due on 17 January. Her email ended with a reminder of the deadline for payment of the deposit.

19. The claimant sent a brief response on 25 January saying that she did require an extension. That email was copied to the Tribunal and referred for judicial consideration. It was seen by Employment Judge Holmes on 3 February 2020, and he granted an extension of time for the Schedule of Loss to 10 February 2020. That was confirmed in a letter to the parties of 13 February 2020.

20. Having arrived at Manchester Airport on the evening of 30 January the claimant had to stay there overnight before travelling to her home in Southport the next day. On Friday 31 January she rang the Employment Tribunal. I accepted her evidence that she formed the impression from that telephone call that she had until midnight that day to pay the deposit and, crucially, that it could be paid online. She returned home and later that day during working hours sought to make payment of

the deposit online. She found that she was unable to do so and that the deposit could only be paid by means of cheque or postal order.

21. The claimant went to her local Post Office either on Saturday 1 February or Monday 3 February and sent off the payment which was received by the Finance Department in Bristol on 4 February 2020. That same day she sent an email to the Tribunal and the respondent which had attached a letter dated 31 January 2020. The letter explained the family emergency in January which led to her going to the Middle East, and reiterated that she had not been able to open any documents on her phone. She said that she had rung the Tribunal and asked for her file to be updated as a record of the communication and that she had been told that a payment could be made up until midnight that day. She only saw once she opened the attachment that this was not the case.

### **Submissions**

22. On behalf of the respondent the written submission of 8 June 2020 drew attention to some issues about the chronology but submitted that the claimant had had the opportunity to make payment during January. It was submitted that it was not necessary in the interests of justice to revoke the judgment. That offended against the public interest in the proceedings being final. In oral submissions Mr Wood developed these points and emphasised that this was a case with very limited merit and a very low value financially. The costs of defending it for the respondent would outweigh its value. There had been no procedural failure here which would justify revoking the judgment striking out the claim: the claimant had had a fair opportunity to pay the deposit on time and had not done so.

23. In her oral submission the claimant emphasised the merits of her case and said that she considered that Employment Judge Sherratt had misunderstood the case when he made the deposit order. She also submitted that the case had value to her beyond its mere financial value because of its impact upon her professional career. She reiterated the factors which had caused her difficulty in paying the deposit when she had intended to, and the fact that she had been told that it would be possible to pay it online and only found out on the very last day this was not so.

### **Conclusions**

24. There had been no application for reconsideration of the Judgment of Employment Judge Sherratt dismissing the discrimination complaints, nor any appeal against or application for variation of his deposit order. I considered that I was not in a position to depart from his view that the complaint of unfair constructive dismissal had little reasonable prospect of success.

25. I noted what the respondent said about the need for finality in litigation. However, the power to reconsider judgments is one which should be exercised where it is necessary to do so in order to do justice between the parties, entirely consistent with the overriding objective of dealing with the case fairly and justly. In my judgment it would not be just to treat these provisions as simply mechanical exercises whereby any claimant who fails to pay a deposit on time loses any prospect of pursuing the case. It must depend in part on the reason for the delay, the length of the delay and any other relevant factors.

26. Looking at the underlying reality of this case I was satisfied that it was in the interests of justice to revoke the Judgment. The claimant had intended to pay the deposit. She had diarised the date from the preliminary hearing. She had ample time to do so in January, and in my judgment would have done so had it not been for the unfortunate personal circumstances which intervened. The death of her mother and the consequent need for her to travel to the Middle East, getting home only on the very last day for payment, were factors which were outside her control.

27. Further, her difficulties were exacerbated by her dyslexia and problems understanding exactly what was required. I also found as a fact that she had not been able to open the attachments to the Tribunal email until her return to the UK. It was only then that she realised that she was not able to make payment online on the very last day, and despite her mobility issues she made arrangements for the deposit to be paid by post as soon as she could.

28. I also took into account the length of the delay. The deposit was paid within four days, two of which occurred at the weekend. This is not a case where the passage of time between the last date for payment and the date of payment could be thought to create any additional difficulties for the respondent. The fact that this application was being heard in October 2020 was attributable to delays on the part of the Tribunal resulting from the pandemic.

29. Further, I had no doubt that if the claimant had contacted the Tribunal and explained her difficulties in January and sought an extension of time to pay the deposit, it would have been granted.

30. Putting all these matters together I was satisfied that it would be unjust to deprive the claimant of the chance of pursuing her claim where she had been hampered by some difficult personal circumstances from making payment within the time limit, and where she had misunderstood the process. To achieve justice between the parties it was necessary to revoke the judgment striking out her claim and to extend time for payment of the deposit by four days to 4 February 2020.

31. The unfair constructive dismissal complaint will now proceed and is the subject of a Case Management Order which will be sent to the parties separately.

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Regional Employment Judge Franey

12 October 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
13 October 2020

FOR THE TRIBUNAL OFFICE

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