



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Boatswain-Tomkin

**Respondent:** Kirklees Neighbourhood Housing Limited

## JUDGMENT

The Claimant's application for the Judgment of 19 October 2020 to be reconsidered is refused.

## REASONS

1. On 19 October 2020 the Tribunal reached a decision that an Order that the Claimant's email of 2 March 2020 be viewed as correcting a defect in the claim should be set aside and the claim should be struck out. On 30 October the Claimant applied for that Judgment to be reconsidered and revoked. The Tribunal has considered that application under Rule 72(1) of its Rules of Procedure.
2. The application is based on an argument that could have been raised during the course of the Hearing but was not. The Tribunal nevertheless considers it in the interests of justice to consider it, in order to avoid if possible the costs to the parties of an appeal.
3. The Claimant argues that, having concluded that the Order that the Claimant's email of 2 March 2020 should be viewed as correcting a defect in the claim should be set aside, the Tribunal should not have struck out the claim. Rather, pursuant to Rule 12(3) of the Tribunals Rules of Procedure, it should have directed that the claim form be returned to the Claimant together with the notice of rejection giving the Judge's reason for rejecting the claim, namely, that the name of the claimant on the claim form was not the same as the prospective claimant on the early conciliation certificate. (The Tribunal does not accept that, if the claim form had been referred to an Employment Judge, there is any prospect that he or she would have considered that the entirely different details of the claimant on the claim form and the prospective claimant on the early conciliation certificate amounted to a "minor error", and

- that the claim might therefore have been accepted.) If that notice had been given, it would have contained information about how to apply for a reconsideration of the rejection. The Claimant would then have had the opportunity to apply for a reconsideration of the decision to reject the claim. Because that notice was not sent, she argues, she has been unable to avail herself of the relevant remedial mechanism incorporated into the Tribunal's Rules of Procedure.
4. The Tribunal accepts that the claimant on the claim form, who was AP, was never given a notice complying with the requirements of Rule 12(3) that her claim was rejected. If that notice had been sent, it would have been sent to the representative named on the claim form, who was also the Claimant's representative at the relevant time. If the Claimant's representative had then applied for the rejection to be reconsidered by confirming that it was in fact the Claimant's name and address that should have been on the claim form rather than AP's, for the reasons set out at paragraph 10 and 11 of the original Judgment that application would have been unsuccessful. The Tribunal would have concluded that the claim was in fact by AP and the original rejection of AP's claim was correct. Effectively, the Claimant was not deprived of any right to apply for the reconsideration of the rejection of her claim because it was not her claim that had been rejected.
  5. As a result of the Tribunal's Judgment, the claim by AP has been properly rejected. A claim by the Claimant has never been validly presented. The Tribunal does not consider there is any reasonable prospect of its original Judgment being varied or revoked. The Claimant's application for reconsideration is therefore refused under Rule 72(1).

Employment Judge Cox

Date: 25 November 2020