



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Nathan Lavanini

**Respondent:** Aspire 4 Technology Group Limited

## JUDGMENT

The respondent's application received on 12 October 2020 for reconsideration of the judgment sent to the parties on 28 September 2020 is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, because

1. The respondent failed to file a Response Form in time by the deadline of 27 March 2020. Its time for filing a response was extended by Regional Employment Judge Parkin on 7 April 2020 to 5 May 2020 and the matter was listed for final hearing on 2 June 2020.
2. On 27 May 2020 the respondent wrote to the Tribunal by email requesting a postponement and by letter apologizing for the lateness of the response but still not providing a response. The letter said that the claimant had only worked for the respondent for one month in October 2019 and had been paid in full. On 29 May 2020 the Regional Employment Judge declined the request for a postponement and directed that in the absence of a Response Form the respondent had no entitlement to resist the claim.
3. The matter was listed for final hearing on 2 June 2020 before Employment Judge Aspinall. The respondent did not participate in the hearing which took place by telephone during restrictions in place for the coronavirus pandemic. Employment Judge Aspinall was not able to make a final determination of the claimant's claim under Rule 21 as it was not fully quantified. The hearing was converted to a preliminary hearing for case management purposes and directions were given on quantifying the claim. The respondent was given until 4pm on 21 July 2020 to send to the Tribunal and copy to the claimant its written representations on remedy. The Case Management orders were sent to the respondent on 19 June 2020.

4. The claimant complied with the case management orders, sending his evidence to the Tribunal and informing the Tribunal that he had had no response to it from the respondent.
5. Employment Judge Aspinall made a determination on paper on 13 August 2020 under Rule 21 Employment Tribunal Rules of Procedure 2013 and judgment was sent to the parties on 28 September 2020.
6. As part of that paper determination Employment Judge Aspinall saw evidence to verify a starting salary for the claimant of £ 16 000 *“it’s £16k a year to start, once you do more training it will go up. I’m not going to not pay you”* and text messages in August 2019 to confirm that the claimant was working for the respondent at that time and a text message in response to the claimant seeking unpaid salary in which the respondent is promising to pay *“you will get paid what you are owed I promise. It’s here on text as proof”*
7. The respondent’s representation in its letter dated 7 October 2020 that the company was only incorporated on 28 August 2019 has been considered by Employment Judge Aspinall. As has the representation made in the 27 May 2020 letter and restated in the 7 October 2020 letter that the claimant worked only from 1 October 2019 to 31 October 2019 for the respondent and was paid for that month. Neither representation would have made any difference to the outcome in this case because 1) the respondent was too late to be heard on liability and 2) even if the respondent was only incorporated on 28 August 2019 the Employment Judge was satisfied that the claimant was engaged and performed work prior to that date so that the provisions of the Transfer of Undertakings Protection of Employment Regulations would be likely to take effect and the employment transfer to the limited company as at the date of any incorporation and 3) the Employment Judge was satisfied that the claimant was working for the respondent (and or its predecessor) from August 2019 until his resignation in October 2019 4) the respondent’s representation that the claimant was only employed for one month in October 2019 had been made in a letter by the respondent and 27 May 2020 and was taken into account as part of the determination on remedy.

The respondent failed to file its Response Form in time, failed to avail itself of an opportunity to present its response late and failed to participate in the hearing on 2 June 2020. Its representation that the claimant had been employed for only one month and paid for that month, October 2019, was considered by Employment Judge Aspinall and rejected on 13 August 2020. It made no further representations on remedy. For all of the reasons set out above, it is not in the interests of justice to reconsider this decision.

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Employment Judge **Aspinall**  
Date 2 December 2020

JUDGMENT SENT TO THE PARTIES ON

8 December 2020

FOR THE TRIBUNAL OFFICE