



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J Jakubowska

**Respondent:** New Clean Dealership Services Limited

**Heard at:** East London Hearing Centre (by Cloud Video Platform)

**On:** Friday 16 April 2021

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

**Representation**

Claimant: In person

Respondent: Neither present nor represented

## JUDGMENT UPON RECONSIDERATION

The Judgment of the Employment Tribunal is that there are no reasonable prospects of the Judgment promulgated on 15 August 2019 being varied or revoked.

***This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.***

## REASONS

1 By Rule 70 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a Judgment where it is necessary in the interests of justice to do so. On reconsideration, the Judgment may be confirmed, varied or revoked.

2 An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record (in this case the written record being the Judgment promulgated on 15 August 2019) was sent to the parties. I shall now refer to this as “*the Judgment*”.

3 On 20 September 2019 the Respondent appealed against the judgment to the Employment Appeal Tribunal on the basis that it never received any communication concerning the Employment Tribunal claim made by the Claimant from the Tribunal offices and was not aware of the hearing and could not attend it on 15 August 2019. The Respondent asserted that had it known about the hearing it would have attended the Tribunal and vehemently fought the case. In its appeal to the Employment Appeal Tribunal the Respondent in addition asserted that it had concerns about the Claimant's work performance and had validly terminated her employment giving her the right of appeal which she did not exercise. It also asserted that it paid her wages, overtime and holiday pay in full.

4 On 4 May 2020, the Employment Appeal Tribunal stayed the Respondent's appeal to give the Respondent an opportunity to submit to the Employment Tribunal an application for reconsideration albeit out of time. The Employment Appeal Tribunal ordered the Respondent to make this application for reconsideration setting out its case that it received no notice of the Employment Tribunal proceedings or the hearing on 15 August 2019. The Employment Appeal Tribunal noted that the application for reconsideration would be significantly out of time but that it would be preferable for the matter to be dealt with by the Employment Tribunal which had the file and was able to make findings as to whether the Respondent was served and or had notice of the proceedings. The Respondent made this application in writing on 19 October 2020.

5 The reconsideration hearing was arranged by the Employment Tribunal on 16 April 2021 and both the Claimant and the Respondent was notified of the date of the hearing in writing at least 14 days before the date of the hearing for reconsideration. The hearing was to take place remotely by CVP. The Respondent was notified in writing to the head office address and by email at the email address which was, [headoffice@newcleanservices.co.uk](mailto:headoffice@newcleanservices.co.uk).

6 On the date of the reconsideration hearing, the Claimant attended the cloud video platform hearing at the date and time notified to her. The Respondents did not attend despite receiving notification. I directed the Tribunal office to contact the Respondent by telephone at its head office telephone number and also to contact the Respondent's Managing Director Mr Edward Ray on the telephone number that was on file. The Tribunal office attempted to contact the Respondent but received no answer.

7 Under Rule 70, a Judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a Judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

8 The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the Judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interests of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.

9 If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon the considering of the application upon the papers initially is to operate as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be the subject of reconsideration hearing. I considered the paperwork submitted by the Respondent to the Employment Appeal Tribunal and found that there were reasonable prospects for the Respondent's application to be accepted and decided to arrange a reconsideration hearing for 16 April 2021 to give both parties an opportunity to make representations and submit evidence.

10 At the reconsideration hearing today and despite the Respondent's unexplained non-attendance, I have considered the Respondent's grounds of appeal to the Employment Appeal Tribunal of 20 September 2019. I do not accept the Respondent's contention that it did not receive the initial documentation from the Tribunal office as asserted or the Notice of Hearing. I am satisfied that the Respondent did receive the initial Tribunal paperwork which attached the Claim Form and proforma Response Form as well as the notification of the Tribunal hearing listed for 15 August 2019. The Respondent chose not to attend the Tribunal hearing on this date. I am also satisfied that the Respondent received notification of the reconsideration hearing on 16 April 2021 in advance of the hearing and chose not to attend this hearing either. When the Tribunal office attempted to make contact with the Respondent by telephone to its head office and on the personal telephone number of the Managing Director, it received no answer. There was no application made prior to the reconsideration hearing for a postponement and indeed nobody attended the reconsideration hearing remotely by CVP on behalf of the Respondent to make any submissions or present any evidence to support its application for a reconsideration.

11 After considering the Respondent's paperwork, I am also satisfied that I considered all of the relevant facts at the first hearing and at this reconsideration hearing. I applied the law correctly in this case. I am satisfied that on the basis of the evidence that I heard from the Claimant on 15 August 2019, she was unfairly dismissed, and the Respondent failed to pay her wages and holiday pay. I was satisfied that the procedure that the Respondent followed to terminate the Claimant's employment was unfair and that she was entitled to the compensation for unfair dismissal that was awarded to her. The dismissal was outside the range of reasonable responses open to a reasonable employer. The interests of justice do not require there to be a reconsideration of the judgment. Accordingly, the application for reconsideration fails and stands dismissed.

**Employment Judge Hallen  
Dated: 19 April 2021**