



# EMPLOYMENT TRIBUNALS

## BETWEEN

**Claimant** Mr K Wood  
**Respondent** RJS Camper Van Conversions Ltd

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Bodmin (via Cloud Video Platform)      **ON**      22 April 2021

**EMPLOYMENT JUDGE** K Halliday

### JUDGMENT ON APPLICATION TO RECONSIDER RULE 21 JUDGMENT

The judgment of the tribunal is that the respondent's application for reconsideration is allowed and the Judgment dated 31 July 2020 is revoked and the Respondent's response is accepted out of time.

### REASONS

1. The respondent has sought a reconsideration of the judgment entered under Rule 21 dated 27 July 2020 which was sent to the parties on 7 August 2020 ("the Judgment") and has made an application for an extension of time to serve its response. The grounds are set out in a letter sent by Mr Paul Wall on behalf of the Respondent on 18 August 2020. Mr Wall has also submitted a signed witness statement dated 22 April 2021 and gave evidence at the hearing.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2015 ("the Rules"). Under Rule 21(2) judgment can be issued where no response has been presented within the time limit in Rule 16, or a response has been rejected and no application for reconsideration is

outstanding, or the respondent has stated that no part of the claim is contested.

3. Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.
4. The Respondent submitted a response which was posted on 17 September 2020 and emailed to the Tribunal on 18 September 2020.
5. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
6. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
7. The grounds relied upon by the respondent are these: that Mr Wall had not seen the original claim naming him personally as a Respondent served on 28 March 2020, nor had he seen the claim with the Respondent amended to the correct company name of RJS Campervan Conversions Ltd which was re-served on 28 May 2020, nor had he seen the notification that Judgement in default was to be entered dated 14 July 2020, notwithstanding that each was correctly addressed to the registered office of the respondent which is Mr Wall's home address at all material times and at which he was the only resident. Mr Wall states that he therefore knew nothing about the claim until he received the Rule 21 Judgment on or around 17/18 August 2020 when it was delivered to him by new occupants at the neighbouring farm.
8. Mr Wall initially suggested that either the earlier Tribunal correspondence was sent to the wrong address or that his estranged wife, Ms Victoria Bartle Wall, also a Director of the Company (as confirmed on Company's House) had taken it and subsequently that it may not have been passed on to him when wrongly delivered to a nearby farm (as was not uncommon). He states that the judgment was delivered by new occupants at the farm but that the earlier correspondence was never received by him.
9. The respondent also relies on the fact that he has a good defence to the claim in that he contends that the Claimant was not dismissed but resigned and it would therefore not be in the interests of justice for the claim not to be heard.

10. Mr Wood suggests that Mr Wall chose to ignore the correspondence from the Tribunal until he received the judgment, and that the judgment should therefore stand.
11. Under the previous Rules of Procedure (relating to the review of what were called Default Judgments) the EAT gave guidance on the factors which tribunals should take into account when deciding whether to review a default judgment in Moroak t/a Blake Envelopes v Cromie [2005] IRLR 535. The EAT held that the test that a tribunal should apply when considering the exercise of its discretion on a review of a default judgment is what is just and equitable. In doing so, the EAT referred to the principles outlined in Kwik Save Stores Ltd v Swain and others [1997] ICR 49.
12. In the Kwik Save decision, the EAT held that "... the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice". The case established that an Employment Judge should always consider the following three factors. First, the explanation supporting an application for an extension of time. The more serious the delay, the more important it is that the Employment Judge is satisfied that the explanation is honest and satisfactory. Secondly, the merits of the defence. Justice will often favour an extension being granted where the defence is shown to have some merit. Thirdly, the balance of prejudice. If the employer's request for an extension of time was refused, would it suffer greater prejudice than the employee would if the request was granted?
13. This guidance in Kwik Save was approved by reference to the subsequent 2013 Rules in Office Equipment Systems Ltd v Hughes UKEAT 0183/16/JOJ.
14. I have also considered the case of Pendragon Plc (trading as C D Bramall Bradford) v Copus [2005] ICR 1671 EAT which confirms that in conducting a reconsideration of a Rule 21 Judgment (formerly a review of a default judgment under the previous Rule 33) an Employment Judge has to take account of all relevant factors, including the explanation or lack of explanation for the delay and the merits of the defence, weighing and balancing the possible prejudice to each party, and to reach a conclusion that was objectively justified on the grounds of reason and justice.
15. Applying these principles in this case, although I find that Mr Wall's evidence was inconsistent and have some concerns about the credibility of his explanation that he received no correspondence from the Tribunal until the Judgment was received, I am satisfied that the respondent has an arguable defence to the claim and in the absence of any evidence to the contrary I

accept his evidence that he did not receive the claim or any previous correspondence from the Tribunal. If the application is granted, the claimant would lose the benefit of the judgment in his favour but would have the opportunity to present his case but if it were to be refused the respondent would lose the opportunity to present an arguable defence. I therefore conclude that it is in the interests of justice for the judgment to be set aside.

16. Accordingly, I allow the application for reconsideration pursuant to Rule 70 and the Judgment is hereby revoked. I also allow the application for an extension of time and the respondent's response is accepted out of time. Case management orders will follow so that the matter progresses.

Employment Judge K Halliday  
Date: 23 April 2021

Judgment sent to the Parties: 29 April 2021

FOR THE TRIBUNAL OFFICE