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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case Number: 4121864/2018**

**Held in Glasgow on 29 August 2019**

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**Employment Judge: I Atack**

**Mrs C O'Brien**

**Claimant  
In Person**

**Greater Glasgow Health Board**

**Respondent  
Represented by:  
Mr Christopher Reeves -  
Solicitor  
And Mr David James -  
Trainee Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The judgment of the Employment Tribunal is that the judgment dated 18 July and sent to the parties on 22nd of July 2019 be revoked and the case be relisted for a Preliminary Hearing on the issue of time bar.

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**E.T. Z4 (WR)**

## REASONS

### Introduction

1. This was an application for Reconsideration of a judgment dated 18 July 2019  
5 and sent to the parties on the 22 July (the “judgment”).
2. That judgment dismissed the claimant’s claim of unfair dismissal because she  
had failed to appear on 15 July, the date fixed for a Preliminary Hearing on  
time bar. An attempt had been made by the clerk on 15 July to contact the  
claimant and a message had been left on her answering machine requesting  
10 her to call the Employment Tribunal as a matter of urgency.
3. The claimant contacted the Employment Tribunal on 19 July and was advised  
by a clerk that her case had been dismissed as a result of her non-  
appearance.
4. The claimant then wrote to the Employment Tribunal by email on 19 July  
15 explaining that she had not received notification of the hearing and that was  
the reason for her non-attendance. She requested that another date be set  
for her hearing as she wished to pursue her claim and intended to attend in  
future.
5. That letter was treated as an application for review under rule 70 of the  
20 Employment Tribunals (Constitution and Rules of Procedure) Regulations  
2013 ( the “Rules”). It was considered under rule 72 and not refused.
6. The parties were advised of the time limit for any response to the application  
and their views where sought as to whether the application could be dealt with  
without a hearing.
- 25 7. The respondent was given an opportunity to answer the application but apart  
from seeking clarification that if a decision was made to overturn the judgment  
the case would again be listed for a Preliminary Hearing on the issue of time  
bar, made no further comment. There was no objection by the respondent to  
the application.

8. It was agreed by the parties that the application would be dealt with on the paper without the necessity of a Hearing in person.
9. The claimant submitted a further letter dated 20 August which restated that she had not received the notice of the Preliminary Hearing due to be heard on 15 July. She also made comments about her general health and sent a copy of a letter from the Nursing and Midwifery Council dated 5 April 2018 regarding their decision in respect of allegations which had been made against her.
10. These latter matters are not relevant to this application. The claimant's sole explanation for her failure to attend on 15 July was that she had not received the notice informing her of the date of the Preliminary Hearing to consider the question as to whether her claim was time barred.
11. In terms of rule 71 an application for reconsideration must be made within 14 days of the date on which the judgment was sent to the parties. The judgment was sent on 22 July but the application was made on 19 July following the claimant's having been advised in a telephone call that her case had been dismissed.
12. Strictly, the provisions of rule 71 have not been complied with as the application was made before the judgment and the reasons for it were sent to the claimant. However, the Employment Tribunal has power under rule 70 on its own initiative to reconsider a judgment where that is necessary in the interest of justice.
13. In terms of rule 90 a document is deemed to be received by the addressee if sent by post, on the day on which it would be delivered in the ordinary course of post. There is therefore a presumption that the notice advising the claimant of the date of the Preliminary Hearing was received by her, unless the contrary is proved. The burden is on the claimant to prove that she did not receive the document. That burden of proof is on the balance of probabilities.
14. In this case the claimant had previously communicated with the Employment Tribunal without problem. She had requested that a previous Preliminary

Hearing which had been fixed for March 2019 be postponed. She had displayed an ability to deal with requesting a postponement when she had been aware of the date of the hearing.

5 15. Having considered all of the claimant had stated in her letters of 19 July and 20 August I considered it was more likely than not that she had not in fact received the notice advising her of the Preliminary Hearing on 15 July. She continues to wish to pursue her claim and has done nothing to indicate that she does not intend to do so. In the circumstances I consider that she has rebutted the presumption that she be deemed to have received the Notice  
10 advising her of the Preliminary Hearing.

16. Bearing in mind that the respondent has not objected to the application I consider it to be in the interests of justice to revoke the judgment of 18 July dismissing the claim of unfair dismissal. The case will now be relisted for a Preliminary Hearing on the issue of time bar.

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Employment Judge: Iain Attack  
Date of Judgment: 29 August 2019  
Entered in register: 04 September 2019  
20 and copied to parties

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