



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4102323/2017**

**Held in Glasgow on 26 September 2019**

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**Employment Judge S MacLean  
Tribunal Member P O'Hagan  
Tribunal Member A McFarlane**

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**Mrs Amanda Tonner**

**Claimant**

**Conroy McInnes Solicitors**

**Respondent**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is that the application for reconsideration is refused and the original decision dated 10 April 2018 and sent to the parties on 13 April 2018 is confirmed.

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**REASONS**

**Introduction**

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1. A final hearing took place on 23, 24 January, 13 and 16 February 2018. The Tribunal reserved its judgment.
2. The Tribunal's judgment was sent to the parties by post on 13 April 2018 (the Original Decision). It stated: "*The judgment of the Employment Tribunal is that the claims are dismissed.*"

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

3. On 26 April 2018 Mr McCluskey, the claimant's representative emailed the Tribunal's office to advise that the judgment was received on 20 April 2018.
4. The claimant wrote to the Tribunal's office on 10 May 2018. The Tribunal has no record of receiving this correspondence which came to the Employment Judge's attention when it was referred to in an email from Mr McCluskey sent on 12 July 2018.
5. On receiving a copy of the letter of 10 May 2018 the Employment Judge directed that it be copied to the respondent. The letter was treated as an application to the Tribunal for the Original Decision to be reconsidered under rule 71 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the Tribunal Rules).
6. The parties were advised that the reconsideration would take place at a hearing on 7 December 2018. This was postponed at the claimant's request due to a family bereavement. The hearing was rescheduled for 8 March 2019 but postponed because of Mr McCluskey's ill health. The hearing was rescheduled to 26 September 2019 being the first available date.

### Reconsideration

7. Mr McCluskey appeared for the claimant who was present. Mr Smith appeared for the respondent.
8. The Employment Judge explained that under Rule 70 the Original Decision will only be reconsidered where it is "*necessary in the interests of justice to do so*". This gave the Tribunal wide discretion. However, it did not mean that in every case where a litigant is unsuccessful, they are automatically entitled to reconsideration of the original decision. The ground only applies where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order. She also explained that the interests of justice as a ground for reconsideration relates to the interests of justice to both sides.

9. Mr McCluskey said that he did not consider that there was enough detail in the Original Decision explaining why the Tribunal considered that the claimant was not employed by the respondent. He also did not consider that there was enough detail to allow the claimant to bring an appeal or another claim to the Tribunal.
10. Mr McCluskey said that the claimant had been employed by the respondent for 10 years. The respondent paid her notice pay. The respondent did not produce a written contract. There was no correspondence at the time about TUPE.
11. Mr Smith said that a key part of the Original Decision was the operation of TUPE. The fact that the claimant had been employed by the respondent for some time did not prevent the operation of TUPE unless she objects to it.
12. He accepted that the position was not clearly in the ET3 response form, but it was discussed at the start of the hearing and the claimant was invited at several stages in the hearing to add an additional respondent but declined to do so. The Tribunal was referred to paragraphs 138 to 144 of the Original Decision.
13. Mr Smith said that the facts to which Mr McCluskey referred today and the absence of notification about the transfer were known to the Tribunal at the hearing and did not mean that there was not a transfer of employment by operation of law. The Tribunal was entitled to reach the conclusion that it did. There were no new facts or lines of argument. It was not in the interests of justice for the Tribunal to revisit all the evidence. There was no basis for the reconsideration.
14. The Tribunal appreciated that when raising the proceedings, the claimant had very limited knowledge of the negotiations and agreement reached between Mr Conroy and Ms McKinnon when their partnership ended. There was no criticism of the claimant in raising the proceedings against the respondent. The Tribunal heard evidence at the hearing from Ms McKinnon and Mr Conroy for the respondent and the claimant. The Tribunal made observations

on the evidence in the Original Decision. The Tribunal considered that its role was not to provide evidence but consider the evidence provided to it. The findings of fact set out in the Original Decision were the findings that the Tribunal considered were essential and relevant to the issues that it had to determine.

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15. The Tribunal was satisfied that the Original Decision set out the reasoning for the conclusions that were reached. The Tribunal's understanding is that the claimant does not agree with the Tribunal's conclusions. It is the nature of tribunal proceedings that a party often finds itself in that position. If the claimant considers that the Tribunal made an error in law, then there is a right of appeal to the Employment Appeal Tribunal.

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16. The Tribunal referred to rule 70 of the Tribunal Rules and noted that upon reconsideration of a judgment the Tribunal may confirm, vary or revoke the original decision and, if revoked, the decision may be taken again. Having considered all the points made by the claimant the Tribunal remained of the view that its Original Decision should be confirmed.

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**S MacLean  
Employment Judge**

**27 September 2019  
Date of Judgment**

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**Date sent to parties**

**07 October 2019**