



# THE EMPLOYMENT TRIBUNAL

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**SITTING:** BY CVP VIDEO CONFERENCE

**BEFORE:** EMPLOYMENT JUDGE BALOGUN

**MEMBERS:** Ms C Bonner  
Dr N Westwood

**BETWEEN:**

Mrs A Rodin

**Claimant**

And

DMS1 Limited

**Respondent**

**ON:** 24 March 2021

**Appearances:**

**For the Claimant: In Person**

**For the Respondents: Ms M Kempley, Solicitor**

## **JUDGMENT ON RECONSIDERATION**

1. The respondent's application for reconsideration of the Judgment, sent to the parties on 16 September 2020 is granted.
2. The said Judgment is hereby revoked.
3. The matters will be listed for hearing before a newly constituted Tribunal panel.

## REASONS

1. By a claim form presented on 14 February 2018, the claimant brought a complaint of failure to inform and consult under TUPE, automatic unfair dismissal, maternity discrimination and unlawful deduction of wages. The claim was brought against Dhillon Management Services Limited, the claimant's former employer, who was the first respondent (R1) and the current respondent (R2). R1 has since been dissolved so the claim can only proceed against the R2, who, after this judgment will be referred to simply as the respondent.
2. The full merits hearing took place on 10 September 2020. Neither of the respondents were in attendance and the matter went ahead in their absence. The outcome of the hearing was a decision in the claimant's favour and an award of £25,360.31 against R2.
3. On 26 September 2020, R2 applied for reconsideration of the judgment, in the interests of justice, on grounds that it was made in their absence.
4. We heard evidence from Rajbinder Sandhu, the sole owner of R2. Her evidence, in summary, was that: she was unaware of the final hearing; she would not have been able to attend as there were vulnerable people within her household shielding due to the pandemic; she was 3 months' pregnant and vulnerable, so was also shielding; and the respondent had an arguable defence to the claim.
5. Having considered the evidence and the representations from the parties, we have reached the following findings and conclusions.
6. On 14 January 2020, a Notice of Preliminary Hearing was issued by the Tribunal, informing the parties that a Case Management Hearing would take place at Croydon on 26 March 2020. That Notice was addressed to the claimant and R1 but not to R2. The Notice was sent by email to the parties, including to R2, using the email address provided. However, because the attached notice was not addressed to R2, Ms Sandhu assumed that it was not the intended recipient. That is clear from her email response to the Tribunal, sent the same day at 18:22 where she states: "***There is no Dillons Management Services Ltd trading from this address, that company has been dissolved***".
7. On 25 March, the Tribunal emailed the parties to inform them that because of the Covid-19 Pandemic, the case management hearing would no longer take place in person and would be by telephone. That email was sent to the claimant and R1 (by then dissolved) but not to R2. As a result, R2 did not attend the telephone case management discussion.
8. The Tribunal order resulting from the case management discussion was emailed to the parties on 9 June 2020. This time it was emailed to R2 and Ms Sandhu received it. Paragraph 9 of the order states that the full merits hearing will take place on 10 September 2020 at the Ashford Employment Tribunal. Ms Sandhu told us that she mistakenly assumed that the hearing would not go ahead because the country was still in Lockdown at the time and she thought that further instructions from the Tribunal would follow.
9. Further instructions from the Tribunal did indeed follow as on 10 August 2020, it sent an email informing the parties that a risk assessment had been carried out at Croydon to ensure that the hearing could proceed safely and with appropriate social distancing and it

had been provisionally determined that the case could proceed in person, at Croydon, subject to replies to a number of enquires put to the parties in the same letter. Unfortunately, the letter was only emailed to the claimant and R1. It was not sent to R2.

10. On 26 August 2020, the Tribunal emailed a Notice of In-Person Hearing, confirming that the hearing would go ahead on 10 September 2020 at the Croydon hearing centre. That notice was not sent to R2 and the hearing proceeded with just the claimant in attendance.
11. The judgment was sent by letter properly addressed to all parties, which R2 received and it was on receipt of this that the reconsideration application was made.
12. Rule 58 of the Employment Tribunal Procedural Rules 2013 (the "Rules") provides that a party shall be given 14 days' notice of a final hearing.
13. Rule 70 of the Rules allows the Tribunal to reconsider any judgment where it is necessary in the interests of justice to do so.
14. Based on the above chronology, it is clear that R2 did not receive notice of the hearing of 10 September 2020 and as a result, was deprived of the opportunity to have its case heard.
15. One of the guiding principles of natural justice is that a party to proceedings should have an opportunity to state their case before a decision is made. R2 was clearly deprived of that opportunity and with serious adverse consequences for it.
16. We are satisfied that it is in the interests of justice that the judgment should not be allowed to stand and we therefore grant the application.
17. The judgment promulgated on 16 September 2020 is revoked.
18. Given this panel's involvement in the earlier judgment and the views that it will have formed about the parties, we considered that it was appropriate for the matter to be heard by a newly constituted panel.

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Employment Judge Balogun  
Date: 26 March 2021

Judgment sent to the parties and entered in the Register on: 11 June 2021

for the Tribunal office

