



# EMPLOYMENT TRIBUNALS

**Claimant:** Hannah Brew

**Respondent:** The Seeing Ear Ltd

**Heard at:** London South

**On:** 21 June 2021

**Before:** Employment Judge Housego

## **Representation**

Claimant: Documentary application

Respondent: Documentary response

## **JUDGMENT ON RESPONDENT'S APPLICATION FOR RECONSIDERATION**

The judgment of the Tribunal is that the Respondent's application for reconsideration of a judgment dated 11 January 2021 is refused because there is no reasonable prospect of the decision being varied or revoked.

## **REASONS**

### **Background and history**

1. Subsequent to a case management hearing taken by me on 10 November 2020, I issued an Order containing deadlines for the Respondent to do certain things. That deadline was 24 November 2020. The Respondent did not attend that hearing.
2. At paragraph 21 of that Order I ordered that:

*“Unless by 4pm on 24 November 2020 the Respondent shows good reason why the response should not be struck out,*

*for the reasons given in the case management summary above, the response will be struck out and judgment entered for the Claimant for £41,475.69.*

3. I also ordered, at paragraph 22:

*“Unless by the same date and time the Respondent gives full addresses for the directors of the Respondent, and states the role of Mr Dart within it, the response will be struck out and judgment entered for the Claimant for the same amount.”*

4. On 11 January 2021, those things not having been done, I issued judgment for the Claimant for £41,475.69.
5. The Order of 10 November 2020 was not sent to the Respondent until (it appears) 15 December 2020, by which time the deadline had expired.
6. However, no judgment had been issued by that date.
7. The Respondent sought to overturn the orders I had made, and on 11 December 2020 the Tribunal gave notice of a *“Reconsideration Hearing”* to reconsider what was described as *“the judgment issued on 10 November 2020”*. The hearing date was 14 April 2021.
8. It appears that the request was prompted by communication from the Claimant’s solicitor, as the request predates the sending of my Order of 10 November 2020 to the Respondent.
9. My judgment on 11 January 2021 recorded that there had been a request for an additional 14 days to comply with the Order of 10 November 2020 (because the Respondent, absent from the hearing on 10 November 2020, could not be expected to comply with deadlines of which it did not know).
10. When I issued the judgment I was working remotely, and was not told of the application to set aside my Order of 10 November 2020, or the hearing date of 14 April 2021.
11. In the judgment of 11 January 2021 I noted that the Respondent had not dealt with paragraphs 21 and 22 of the Order of 10 November 2020, even though they had ample time in which to do so, and that was part of the rationale for the judgment.
12. On 13 May 2021 (the day before the hearing listed for 14 April 2021) Regional Employment Judge Freer directed that the whole matter should be referred to me, as both the Order of 10 November 2020 and the judgment of 11 January 2021 were made by me.

13. The letter setting this out for the parties also contained REJ Freer's reminder that there was a 14 day period for the making of an application to reconsider a judgment, and he stated that any such application should state succinctly why an extension of time should be granted pursuant to Rule 5.

14. The application of 20 May 2021 deals with this and states:

*"The Respondent avers that he has endeavoured to comply with all matters required to within the allotted timeframe and that there have been various errors by the Tribunal that have hitherto frustrated the presentation of the Respondent's case.*

*Due to the above unfortunate combination of circumstances which were outside of the control of the Respondent, and in particular pursuant to Rule 5 which holds that other Tribunal rules (such as time limits) may be modified in order that both parties are dealt with fairly and justly, the Respondent respectfully requests that this Application for reconsideration be admitted as to date the Respondent has been denied opportunity to defend while the Claimant has been given opportunity to state her case."*

15. No detail of what is meant by this is apparent from the application itself, save that there have been errors by the Tribunal, and that the Respondent has not been heard on the merits.

16. The application dated 20 May 2021 of the Respondent for reconsideration of the judgment of 11 January 2021 does not deal with either paragraph 21 or paragraph 22 of the Order of 10 November 2020.

#### The Respondent's status

17. At a case management hearing on 16 April 2020 Mr Dart stated that the Respondent "*had ceased to exist*" (the Order so records). Companies House now states that there is an active proposal to strike the company off the register of companies voluntarily.

18. That application to Companies House was signed by the 3 directors, and is dated 29 April 2020, and was filed on 04 May 2020. On 13 August 2020 and again on 05 November 2020 this was suspended, on objection being received. The Claimant's solicitor says this was on his application, on behalf of the Claimant.

19. Tony Dart is the only person who has corresponded with the Tribunal about this claim. He was a director of the Respondent from 12 January 2005 until his resignation on 04 March 2008. The company is a company limited by guarantee.

20. The application of 20 May 2021 (quoted above) indicates that Mr Dart regards himself as the Respondent.
21. There has been no communication from anyone else connected with the Respondent at any time since the claim was filed.

### Relevant Rules

22. The relevant procedural rules are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Those relevant Rules are as follows:

#### *RECONSIDERATION OF JUDGMENTS*

##### ***Principles***

*70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.*

##### ***Application***

*71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*

##### ***Process***

*72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*

*(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

*(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.*

**Reconsideration by the Tribunal on its own initiative**

*73. Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).*

The application

23. The application is very lengthy, but in essence it is that the judgment of 11 January 2021 is a breach of natural justice. There was a Tribunal error and the Respondent did not know of the hearing on 10 November 2020, and so the Order itself was unfair. By the time it was sent to the Respondent (or they became aware of it) the deadline had passed. Even though they asked for more time, judgment was entered without that application being considered. There was an application to reconsider that Order, and a hearing date was listed for 14 April 2021, but the judgment was issued without that application being considered. The judgment should not have been entered until that application had been decided. The matter only came up on 13 April when REJ Freer was considering the imminent hearing (the next day) of the application to reconsider the Order of 10 November 2020.

24. It was unfair that the Claimant should be heard and the Respondent not, for such a large judgment, when the Respondent had a strong case.

### The response

25. On 25 May 2021 the Claimant's solicitor pointed out how late in the day the application was made. The judgment of 11 January 2021, referring back to the Claimant's case and the impossibility of coherent response by the Respondent on the basis of what the Respondent accepted, was entirely correct.
26. The Respondent had ceased trading before April 2020, and had applied to be struck of the register of companies. This was plainly improper as the directors had to file a certificate that there were no outstanding issues which might give rise to a claim against the company: and that was only days after Mr Dart had attended a hearing in respect of this claim (hearing 16 April 2020, application 29 April 2020, filed 04 May 2020). This was plainly a device to try to defeat the claim. The Claimant had prevented this until 02 November 2021.
27. In reality it was likely the claim would result in a claim against the Insolvency Service as it seemed unlikely the Respondent had any assets.
28. It was entirely unclear what role Mr Dart had in the Respondent. The Respondent had been ordered to set this out, in the Order of 10 November 2020, but over 6 months later had not done so.
29. The judgment was entirely proper, Mr Dart had not shown that he was entitled to make the application for the Respondent, and it was long out of time, with no good reason to extend time.

### Consideration

30. It is clear that there have been significant errors made by the Tribunal system. If these are the cause of the Respondent's difficulty, or a significant contributor to them, then the interests of justice will require the application to proceed to a hearing, and not be rejected on the basis that there is no reasonable prospect of the judgment being varied or set aside.
31. However, they are not the root cause, or a significant factor in this case.
32. There is nothing to show that Mr Dart has any authority to make the application to set aside the judgment of 11 January 2021. The Respondent is 6 months in default of an order to provide such authority.
33. The application was made on 21 May 2021, for a judgment entered in 11 January 2021, and the time limit is 14 days. There is no good reason to extend time.

34. Even if (the most favourable interpretation possible for the Respondent) they thought that the matter would be dealt with on 14 April 2021, the application was not made for 5 weeks after REJ Freer directed that the matter be dealt with by me, expressly pointing out the 14 day limitation period for making such an application.

35. I adopt the submissions of the Claimant's solicitor set out above.

36. Accordingly, the application for a reconsideration of the judgment of 11 January 2021 is refused.

Employment Judge Housego  
Dated 21 June 2021