



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Virgin

**Respondent:** Middlewood Landscape Services Limited

**Heard at:** Manchester

**On:** 7 May 2021

**Before:** Employment Judge Ainscough  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Not in attendance

# JUDGMENT ON RECONSIDERATION

The Tribunal having considered the application of the respondent for a reconsideration the Judgment of 1 October 2019 is confirmed.

## REASONS

### Introduction

1. The Tribunal, by a Judgment dated 1 October 2019, concluded that the claimant's claims for:

- (a) breach of contract,
- (b) unlawful deduction from wages,
- (c) non payment of a redundancy payment, and
- (d) non payment of holiday pay,

were successful.

2. The Judgment with written reasons was sent to the parties on 31 October 2019.

### **Application for Reconsideration**

3. On 12 November 2019 the respondent applied for a reconsideration of the Judgment on the grounds that the respondent had not received notification of the change to the respondent's name, and that the original ET1 form should have been rejected.

4. In accordance with rule 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, I considered the application for reconsideration and sent a notice to the parties on 17 December 2019 seeking a response from the claimant to the application.

### **Claimant's response to application**

5. On 8 January 2020 the claimant responded to the reconsideration application made by the respondent.

6. In his response the claimant contended that the application should not proceed because the respondent did not attend the final hearing on 30 September 2019. The claimant submitted that that final hearing had already been postponed from 5 April 2019 because the respondent was on holiday.

7. It was the claimant's position that in the ET3 the respondent asked for the name of the respondent to be changed from Michael Collins t/a Middlewood Landscape Services to Middlewood Landscape Services Limited. The claimant submitted that he did not object to the change of name. The claimant submitted that the name was subsequently changed at the final hearing on 30 September 2019 as per the respondent's request.

### **The Law**

8. Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provide as follows:

“The Tribunal may, either on its own initiative 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.”

9. In the case of **Outsight VB Limited v Brown [2015] ICR D11 EAT**, Her Honour Judge Eady QC directed that when a Tribunal is determining whether reconsideration is in the interests of justice, any discretion of the Tribunal should be exercised judicially which:

“...meant having regard not only to the interests of the party seeking the review for reconsideration, but also to the interest of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.”

10. Her Honour Judge Eady's view echoed that made in the case of **Stevenson v Golden Wonder Limited [1977] IRLR 474 EAT** in which it was determined that the reconsideration process was:

“Not...to provide parties with the opportunity of a re-hearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before.”

### **The Proceedings**

11. On 3 August 2020 the Tribunal listed the reconsideration hearing for 20 November 2020 in person.

12. On 11 November 2020, on our own initiative, the Tribunal informed the parties that the hearing would take place via the Cloud Video Platform.

13. On 13 November 2020 the respondent resubmitted the ET3 with additional submissions in regard to the claims made by the claimant. It was the respondent's submission that from 2016 there had been a decline in work because the main source of work had died and the new management company no longer required the respondent's services. The respondent maintained that in March 2019 there was no work to give to the claimant. The respondent drew the Tribunal's attention to the fact that the respondent's business account was overdrawn, there were no assets and the company leased vehicle was being recovered by the lease company.

14. On 20 November 2020 the respondent was unable to log in to the Cloud Video Platform and applied for a postponement of the hearing so that it could take place in person. I agreed to that postponement application, and the reconsideration hearing was relisted for 7 May 2021.

15. On 6 May 2021 the respondent emailed the Tribunal to inform the Tribunal that he would not be attending the reconsideration hearing due to personal circumstances, and again made written submissions for consideration. On receipt of the respondent's email, I determined that the hearing would go ahead in his absence and on the basis of his written submissions.

16. Those submissions were the same as submitted on 13 November 2020 with the addition of the information that as a result of the pandemic, the business had been unable to recover and had lost all contracts.

17. The claimant attended the hearing on 7 May 2021 and was asked to respond to the submissions made by the respondent. It was the claimant's contention that at the original final hearing he was able to prove that his employment was continuous as he continued to be paid during the winter months, and that the respondent had been unable to provide any documentation to show that the claimant had been laid off during the winter months. The claimant said that he was therefore entitled to the awards made on 1 October 2019.

### **Discussion and Conclusion**

18. The respondent has not submitted any evidence in addition to that contained within the ET3 form which generally disputed that the claimant was entitled to any payments owed on the termination of his employment.
19. The respondent has re-asserted that position without providing any documentary or witness evidence to support those assertions.
20. The claimant has maintained his position as to why he is owed the money given in the Judgment of 1 October 2019.
21. The respondent has not provided any evidence to suggest that the Judgment made on 1 October 2019 should not be confirmed. A reiteration of the position taken in the ET3, without any additional evidence or attendance by the respondent at the Tribunal, is not sufficient to overturn that Judgment. It is not in the interests of justice, taking into account the claimant's position and that of the public interest in the finality of litigation, to overturn this decision.
22. The dire financial straits of the respondent's business are not grounds for overturning a Judgment. The claimant has an understanding as to how to enforce the Employment Tribunal Judgment and recover payment.
23. The respondent's application for reconsideration is refused.

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Employment Judge Ainscough

Date 4 August 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

5 August 2021

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