EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss E Francis	**and**	JVN Global Ltd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Respondent's application for reconsideration is permitted and the Judgment dated 22 December 2020 is revoked. The parties will receive a Notice of Hearing with directions under separate cover.

REASONS

1. The Respondent applied for a reconsideration of the Judgment dated 22 December 2020 which was sent to the parties on 7 January 2021. The grounds are set out in its application of 31 March 2021.

2. Both parties asked for the application to be determined on paper and it was not in the interests of justice to convene a hearing to determine it, both parties having submitted detailed written representations on the issue (rule 72 (2)).

3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under rule 71, an application for reconsideration under rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received outside the relevant time limit.

4. Under rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

5. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at the hearing, any error of law fell to be corrected on appeal and not by review. In addition, in *Fforde-v-Black* EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean "*that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review.*

This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order". More recent case law has suggested that the test should not be construed as restrictively as it was prior to the introduction of the overriding objective (which is now set out in rule 2) in order to ensure that cases are dealt with fairly and justly. As confirmed in *Williams-v-Ferrosan Ltd* [2004] IRLR 607 EAT, it is no longer the case that the 'interests of justice' ground was only appropriate in exceptional circumstances. However, in *Newcastle Upon Tyne City Council-v-Marsden* [2010] IRLR 743, the EAT stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

Relevant background

6. The claim had not had a happy history. The Claim Form was issued on 30 April 2020. It contained claims of unfair dismissal and unlawful deductions from wages and was issued against the Respondent and another party, Motor Fuel Ltd ('MFL'). The claim arose out of the Claimant's employment at a service station known as Cartgate Services, Stoke-sub-Hamdon, Somerset until her resignation on 31 March 2020.

7. No response was initially received from either Respondent although, on 29 September 2020, an application for an extension of time was made by MFL. The Tribunal then asked the Claimant whether she wished to have judgment entered against this Respondent, which had not responded at all, or whether she wished to proceed against MFL. Ultimately, MFL was removed from proceedings and judgment was entered against the Respondent on 22 December 2020 in default of a response having been filed.

8. On 22 January 2021, the Tribunal received a request for written reasons in respect of the Judgment from the Respondent. It was informed that no written reasons were to be provided since the Judgment had been entered in default under rule 21 but that, if it asserted that the claims had been wrongly brought, it was advised to lodge a response out of time and to seek to have the Judgment reconsidered.

9. On 9 March, the Respondent explained the reasons behind its delay. They were largely related to office closure during the Covid pandemic and domestic problems associated with Covid infection. No draft response was supplied and the Tribunal again informed the Respondent that such a document was required in order for a reconsideration application to have been progressed.

10. On 31 March, that application was finally made. Mr Thirupparankirinathan, as a Director of the Respondent, restated the reasons for the delay and went on to state that the claim against the Company had been made in error because the business had been sold to Krishan Service Station Ltd on 7 February 2020. That date predated the Claimant's effective date of termination which, in the Claim Form, was stated to have been 31 March 2020. The Respondent also produced a P45 in support of its application, showing the end of the

Claimant's employment with it to have been 7 February, in accordance with the alleged date of transfer.

11. If the Respondent is right, of course, there may have been a transfer of the business to the new employer prior to the Claimant's dismissal and her complaints ought to have been directed to Krishan Service Station Ltd in those circumstances.

12. Accordingly, on 29 July 2021, the Tribunal asked the question whether the Claimant accepted that her employment had been transferred on 7 February, over a month before her resignation. By a letter dated 5 August 2021, she rejected that suggestion; she said that she was not at her workplace physically at that time because she had been off sick with anxiety and mental stress issues.

Conclusions

13. The Respondent would appear to have a triable defence to these claims. Whether the Claimant knew of the transfer or not, if there was in fact a valid transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006, this Respondent may have been incorrectly joined.

14. Although the delays have been unfortunate, the Respondent's explanation for them have been understandable in the circumstances and now that it has been able to address the substance of the allegations, it is appropriate to revoke the default judgment and to have the matter listed for a hearing to determine the issues properly on evidence.

15. The parties will receive separate notification of the date for that hearing with appropriate directions in due course.

Employment Judge Livesey
Date: 10 August 2021

Sent to the Parties: 17 August 2021

FOR THE TRIBUNAL OFFICE