EMPLOYMENT TRIBUNALS

Claimant: Mrs R Pearson

Respondent: Terrain Construction Group Ltd

JUDGMENT ON RECONSIDERATION

Rules 70-73 of the Employment Tribunal Rules of Procedure 2013

The respondent's email of 02 September 2021 for reconsideration of the judgment in this case is refused.

REASONS

1. By email presented to the tribunal on 02 September 2021, the respondent applied for reconsideration of the Rule 21 judgment that was dated 13 July 2021, and sent to the parties on 15 July 2021. It is not entirely clear the basis on which an application for reconsideration was being made, other than a one line comment that the claimant had never been employed by the respondent.

2. Although this application is significantly out of time, taking a pragmatic view, I have decided that I will still consider the application and pass judgment on it. This is despite there being no reasons provided to support an extension of time to consider the application.

3. The history of the case is straightforward. The claimant brought her claim on 30 November 2020. The claim was accepted against the respondent company, and served on the address recorded in the ET1, which was 'Unit 15 Hockley Court, Stratford Road, Hockley Heath, Solihull, West Midlands, B94 6NW'. The case was listed to be heard on 26 May 2021.

4. On 11 January 2021, the claimant provided the tribunal, with the respondent copied into the email, with a schedule of loss, which showed how losses were calculated.

5. Following a referral to the Duty Judge, and a companies house search, it was discovered that the registered office address for the respondent was in fact 'The Coach House, Greensforge, Kingswinford, England, Dy6 0AH'. In light of this, by letter dated 12 May 2021, Employment Judge Broughton wrote to the parties. He directed that the claim should be re-served on the respondent, at the respondent's registered address. This resulted in the hearing of 26 May 2021 being postponed.

6. A new notice of claim was sent to the parties on 12 May 2021. This laid down that if the respondent wanted to defend the claim then a response form must be received by the tribunal by 09 June 2021. The position of applying for an extension of applying for an extension to this deadline was also explained in the notice. It was further explained that a judgment may be issued against a respondent who does not submit a response in time.

7. The hearing was re-listed to be heard on 15 October 2021.

8. No response was presented by the respondent.

9. On 13 July 2021, this matter was again referred to the Duty Judge, which was me on that occasion. The respondent had been warned of the potential implications of not presenting a response, no response had been presented, and having considered the available material, I decided that a determination of the full claim could be properly made. Judgment was made pursuant to Rule 21 and signed on 13 July 2021, and sent to the parties on 15 July 2021. The hearing date was vacated as a result; in short, it was no longer needed as judgment had been made.

10. On the 02 September 2021, using the same email address on which the claimant had served her schedule of loss, Mr Wayne Butterfield of the respondent wrote to the tribunal with an email that merely stated the following:

> Good afternoon,
>
> There has been an error, I have emailed previously and did not receive a response.
>
> Mrs Rachel Pearson has never been employed by Terrain Construction Group as per your judgment, they information you have is incorrect.
>
> Thank you
>
> **Best Regards**
>
> *Wayne Butterfield*

11. There were three attachments to the email. The first attachment was just a copy of the judgment. The second attachment appeared to be a blank email sent to the Employment Appeals Tribunal (EAT) on 26 July 2021. The third attachment appears to be the automated response from the EAT. I note that in the tribunal file the tribunal has also been sent copies of an email sent by the claimant to the ET penalties inbox on 02 September 2021, with their response on 02 September 2021. These provide no further detail to that received by the tribunal in the email sent by the claimant on 02 September 2021.

12. The position with respect reconsideration of judgments are contained within Rules 70-73 of the Employment Tribunal Rules of Procedure 2013. According to Rule 70, a Tribunal, either on its own initiative or on the application of a party, may reconsider any judgment 'where it is necessary in the interests of justice to do so'.

13. Under Rule 72 of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked. Where the application is not refused, the application

may be considered at a hearing, or, if the judge considers it in the interests of justice, without a hearing. Where the latter course is the course to be adopted, the judge will give the parties a reasonable opportunity to make further written representations.

14. Simler P set out the approach to be taken by tribunals when considering an application for reconsideration in **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA**:

    a. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;

    b. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and

    c. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.

15. Furthermore, Simler P, at paragraphs 34 and 35 of Liddington also explained the following:

    > "*A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.*

16. I have considered carefully the respondent's email of 02 September 2021. First, there is no explanation as to why no response was presented to the claim, nor why there were significant delays in making this application for reconsideration. Secondly, there is still no response form. Thirdly, the respondent had every opportunity to raise the argument it now seeks to do, and to allow this application for reconsideration to succeed would be to give the respondent a second bite at the cherry. Fourth, the claimant was aware by email of the claimant's schedule of loss, and so was fully aware of the claim being brought, of which it chose not to defend.

17. I consider that there is therefore no reasonable prospect of the original decision being varied or revoked.

18. The application for reconsideration is therefore refused.

Employment Judge **Mark Butler**

10 September 2021