



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr T Borzecki

AND

Let's Construction Limited

Judgement on reconsideration

The Respondent's application dated 20 March 2020 for reconsideration of the Judgement sent to the parties on 9 March 2020 is accepted and the default judgment dated 21 January 2021 (the Judgement) is revoked.

Reasons

- 1) I have considered the application by the Respondent dated 12 October 2021 for a reconsideration of the Judgement.
- 2) I have considered the request in accordance with the provisions set out in Rule 70 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (the Rules) which provides that reconsideration is only appropriate where it is necessary in the interests of justice and under Rule 72 there is a reasonable prospect of the original decision being varied or revoked.
- 3) A Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' — Rule 2.
- 4) In considering the application regard needs to be given to not only the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

The Respondent's application for reconsideration

- 5) The Respondent applied for reconsideration in its letter dated the 24 September 2021 on the basis that the claim had not come to its attention given the circumstances of the lockdown owing to the pandemic. In summary the Respondent argued that the judgment should be set aside for the following reasons:
- a) The Respondent had no knowledge of the Claimant's claim or that any claim had been made against them in the Tribunal. As soon as the Respondent learned of this matter, the Respondent has acted swiftly in instructing representation. This application is submitted at the earliest possible opportunity following the Respondent's learning of the Claimant's Claim.
 - b) Whilst the Respondent has not had sight of the Claimant's claims, the Respondent maintains that they are able to provide an arguable defence to the claim presented and the interests of justice require this to be heard.
 - c) The Respondent has not had sight of the allegations made against it and as such the parties have not at any time been on an equal footing, and as such, reconsideration and set aside of the judgement is in line with the overriding objective.
 - d) Should the Respondent not be allowed to present its defence, the Claimant will otherwise receive an unjustified windfall of compensation, where liability is not contested.
 - e) Allowing such an application is in line with the Tribunal adopting a flexible approach, where appropriate as per Rule 2(c).
 - f) The Respondent will suffer prejudice if it is unable to submit a full response to the Tribunal, where the Claimant will not suffer prejudice by the Respondent being permitted to respond to the claim, and a fair hearing held.
 - g) It is in the interests of justice for the Respondent to be allowed to put their defence to the Claimant's claims.

Notice to the Claimant

- 6) In the Tribunal's letter dated 12 October 2021 the Claimant was given until 4 PM on 22 October 2021 to make any written representations as to why it would not be appropriate to revoke the Judgment. He failed to do so.

Conclusion

- 7) Given the exceptional circumstances set out above in the Respondent's grounds of application, and given the Claimant's failure to make any written representations as to why the judgment should not be set aside, I consider that the balance of prejudice is in favour of the Respondent and the judgment

should be set aside and the Respondent given the opportunity to contest the claims being pursued by the Claimant at a hearing.

Employment Judge Nicolle

Dated: **24 October 2021**

Sent to the parties on:

25/10/2021.

For the Tribunal Office