



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Lavender

**Respondent:** Betterclean Services Franchising Limited

**Heard by way of written submissions**

**On:** 24 November 2021

**By:** Employment Judge C H O'Rourke

## JUDGMENT ON RECONSIDERATION APPLICATION

The Claimant's application of 19 August 2021, for reconsideration of the Judgment of 13 August 2021 is allowed and that Judgment, dismissing his claim, is revoked.

### REASONS

1. Following a hearing on 13 August 2021, at which the Claimant did not attend, his claim for breach of contract and failure to provide terms and conditions of employment was dismissed, subject to Rule 47 of the Tribunal's Rules of Procedure 2013.
2. On 16 and 19 August 2021, the Claimant wrote to the Tribunal (not copied to the Respondent), stated that he'd had no prior warning of when the hearing date was and requesting that another hearing date be set.
3. Those emails have been treated as an application by the Claimant for reconsideration of the judgment of 13 August 2021, subject to Rules 70-72
4. Neither party having requested a hearing to decide this application, it is dealt with by way of consideration of written submissions from the parties. Those submissions are as follows:

- a. The Claimant. The Claimant simply states that he was unaware of the hearing of 13 August 2021, which is why he did not attend.
- b. The Respondent. The Respondent replied to the Claimant's application on 1 October 2021, summarised as follows:
  - i. The Respondent has received all Tribunal correspondence and it having being confirmed by the Royal Mail that the Claimant has received correspondence from the Respondent, it must be assumed that contrary to his assertions otherwise, the Claimant has received notification of the hearing and is simply making excuses for his non-attendance.
  - ii. The case management order following the hearing of 16 June 2021 instructed the parties to agree a bundle of documents and exchange witness statements. While the Respondent did invite the Claimant to add any documents he wished to the bundle, he provided no response and nor, subsequently, did he exchange witness statements with the Respondent, or explain that failure.
  - iii. It has already been commented on by the judge dealing with the case management hearing of 16 June 2021 that because the Claimant had previously asserted that documents had gone astray in the post, he should 'look out for' the case management order and that if it had not been received, he should contact the Tribunal. Clearly, he had not done so, as otherwise he would have been aware of the hearing date of 13 August 2021.
  - iv. It considered that the Claimant was simply seeking to waste both the Tribunal's and the Respondent's time in this matter.

5. Consideration. It is clear that the Claimant has been anything but active in pursuing this claim. However, clearly, from the correspondence received from the Respondent just prior to the 13 August hearing, it seems that unfortunately the Tribunal did not send out a formal Notice of Hearing in this matter (and there is none on the Tribunal file), formally listing the Hearing and with instructions as to how to join it (as it had done for the 16 June hearing). The Respondent's email (not copied to the Claimant) stated:

*'Re: case number 1406177/2020*

*It is 9:46 on Friday 13<sup>th</sup> August and we have been trying to make contact with yourselves since 8:30 this morning regarding the hearing that is scheduled for 10am today as we have not received joining instructions.*

*There is no answer on the telephone number 0117 929 8261 and, as such, we are unable to access the hearing.*

*Can you please reply to this email ASAP as the hearing is due to start in 10 minutes'.*

6. On the basis, therefore that no formal Notice of Hearing was sent to the parties (apart from reference to the hearing date in the case management order, which the Claimant, by implication, asserts he has not received), or instructions as to how to join the hearing, there must be at least some doubt that the Claimant was aware of it. I find, therefore that it is in the interests of justice to grant the Claimant's application.
7. The hearing will be re-listed, as set out in a separate case management order, of same date.

Employment Judge O'Rourke  
Date: 24 November 2021

Judgment & reasons sent to parties: 14 December 2021

FOR THE TRIBUNAL OFFICE