# EMPLOYMENT TRIBUNALS

**BETWEEN**

| Claimant | | Respondent |
|---|---|---|
| **Mrs S Chawda** | **AND** | **Chawda Holdings Limited** |

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD IN CHAMBERS AT Bristol ON 6 January 2022**

**EMPLOYMENT JUDGE** J Bax

**JUDGMENT ON APPLICATION FOR RECONSIDERATION**

**The judgment dated 7 December 2021 striking out the arguments that the Claimant was not an employee and that the actions of the Respondent were not sex discrimination is revoked.**

**The time for the Respondent to pay the deposits pursuant to the deposit order dated 3 November 2021 is extended to seven days after the receipt of this Judgment.**

**The Preliminary Hearing on 22 March 2022 shall proceed as originally listed.**

**REASONS**

1. The claimant has applied for a reconsideration of the judgment dated 7 December 2021 striking out elements of the Response after the

Respondent failed to pay the deposits required by the order of Employment Judge Housego dated 3 November 2021. The Judgement was sent to the parties on 9 December 2021. ("the Judgment").

2. The grounds are set out in the Respondent's e-mails dated 10 November 2021, namely that the failure to pay the deposits was due to an administrative error. The application was copied to the Claimant's representative. On 21 December 2021, the Respondent was directed to explain what the administrative error was by return and the Claimant was asked to comment on the Respondent's e-mail by 28 December 2021.

3. On 22 December 2021 the respondent e-mailed the Tribunal, copying in the Claimant and said that there had been an error with calculating the date for payment and in putting it in the fee-earner's diary. It was said it was always the Respondent's intention to pay the deposit and the error was unintentional.

4. On 1 January 2022, the Claimant's representative indicated that they were still awaiting a decision on reconsideration and said they were happy to use the listed preliminary hearing for case management. No objections to the application have been raised by the Claimant.

5. This is effectively a retrospective application to extend time for the payment of the deposit.

6. 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 within the relevant time limit.

7. 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.

8. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

9. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls 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".

10. More recent case law suggests that the "interests of justice" ground 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). This requires the tribunal to give effect to the overriding objective to deal with cases 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 confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.

11. The cases of The Governing Body of St Albans Girls School v Neary [2010] IRLR 124 1190, and Thind v Salvesen Logistics Ltd UKEAT/13/01/2010, although in relation unless orders provide some assistance.

12. Per Underhill P in Thind: "The tribunal must decide whether it is right, in the interests of justice and the overriding objective, to grant relief to the party in default notwithstanding the breach of the unless order. That involves a broad assessment of what is in the interests of justice, and the factors which may be material to that assessment will vary considerably according to the circumstances of the case and cannot be neatly categorised. They will generally include, but may not be limited to, the reason for the default, and in particular whether it is deliberate; the seriousness of the default; the prejudice to the other party; and whether a fair trial remains possible. Unless orders are an important part of the tribunal's armoury…not to be used lightly…their effectiveness will be undermined if tribunals are too ready to set them aside…no one factor is determinative…Each case will depend on its own facts…I would not wish it to be thought that it will be usual for relief to be granted…there is an important interest in tribunals enforcing compliance, and it may well be just…for a claim to be struck out even though a fair trial would remain possible."

13. In Neary Elias LJ agreed (at paragraph 47) with the general proposition that tribunals should apply "the same general principles as are applied in the Civil Courts". This includes the guidance given in Denton v TH White Ltd [2014] EWCA.

14. The Respondent was aware of the deposit orders and calculated the day for payment, but made an error in so doing and mis-diarised the date. As soon as the error was apparent, on receipt of the strike out Judgment the application was made the following day. The Respondent acted promptly. The reason given is not one which is a good reason, in that dates should be calculated correctly and the failure to pay the deposits cannot be said to be trivial.

15. The Claimant has not raised an objection to the application. It is necessary to take into account the overriding objective, including the need to place the parties on an equal footing. The claims involve significant issues and to prevent the Respondent from putting forward its full case will give the Claimant a windfall. The Respondent always intended to pay the deposits. The preliminary hearing can still be maintained and there will be no prejudice to the Claimant other than a loss of a windfall. It was therefore in the interests of justice to revoke the Judgment and extend time for the payment of the deposit.

16. The time for payment of the deposit is extended to 7 days after receipt of this Judgment.

Employment Judge J Bax
Date: 06 January 2022

Judgment sent to Parties: 06 January 2022

For the Tribunal Office