



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs C Holden

**Respondent:** Grays (Fish and Chips Halifax)

**Heard at:** Leeds (on the papers) **On:** 27 January 2022

**Before:** Employment Judge Cronin

## Representation

Claimant: attendance not required

Respondent: attendance not required

## JUDGMENT

1. The respondent's application for reconsideration of the Judgment dated 29 November 2021 (and sent to the parties on 13 January 2022) is refused pursuant to Rule 72(1) of the Employment Tribunal Rules of Procedure 2013.

## REASONS

### *Tribunal proceedings and correspondence*

2. The claimant submitted an ACAS early claim conciliation request relating to the respondent on 28 July 2021 and conciliation concluded on 18 August 2021.
3. The claimant submitted a claim to the Tribunal by way of ET1 dated 13 September 2021.
4. The respondent failed to file an ET3 Grounds of Resistance and failed to attend the hearing listed on 29 November 2021.
5. The Tribunal sent a Notice of Hearing to both parties on 04 October 2021
6. The respondent wrote to the Tribunal and the letter dated 02 November 2021 was referred to Employment Judge Cox who replied as follows:

“The Respondent’s application for an extension of time to present its response must be accompanied by a draft response it wishes to present. A further ET3 is enclosed”

7. The reply of EJ Cox was sent to the respondent by the tribunal on 18 November 2021 by way of Acknowledgement of Correspondence.
8. The respondent emailed the tribunal on 29 November 2021 attaching copy text messages submitting that the claimant was self-employed but no application for an extension of time with draft response had been sent by the respondent.
9. The claimant attended the CVP link for hearing and the Tribunal was satisfied that the respondent knew of the hearing and had chosen not to attend.
10. The tribunal satisfied itself that no ET3 Grounds of Resistance had been received and considered that a determination could properly be made without a hearing.
11. The Judgment dated 29 November 2021 was sent to the parties on 13 January 2022 (the “**Judgment**”).

*Rules regarding reconsideration*

12. The Employment Tribunal Rules relating to reconsideration of judgments are set out at Rules 70-73 at Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.
13. Rule 70 permits the Tribunal to: *“reconsider any judgment where it is necessary in the interests of justice to do so”*. The EAT confirmed in *Outasight VB Limited v Brown UKEAT/0253/14* that the case law guidance relating to the equivalent ‘review’ provisions under the previous 2004 Rules also applied to the 2013 Rules. This guidance includes:
  - 13.1. that public policy requires that there must be finality in litigation;
  - 13.2. a failure by a party’s representative to draw attention to a particular argument will not generally justify a review (referred to as a reconsideration under the 2013 Rules); and
  - 13.3. *‘in the interests of justice’* means the interests of justice to both sides.
14. In addition, the EAT also held in *PJ Drakard and Sons Ltd v Wilton* [1977] ICR 642 (concerning the previous ‘review’ provisions) that the party applying for reconsideration must set out the grounds on which they contend that the original decision is wrong.
15. Rule 71 states: *“...an application for reconsideration shall be presented in writing...within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties...and shall set out why reconsideration of the original decision is necessary.”*

16. The Judgment was sent to the parties on 13 January 2021 and the deadline for an application for reconsideration was 27 January 2021.

17. The Tribunal may, in its discretion, extend the time limits for an application for reconsideration under Rule 5 which states: *“The Tribunal may... on the application of a party extend or shorten any time limit specified in these Rules..., whether or not (in the case of an extension) it has expired.”*

*Respondent’s correspondence with the Tribunal*

18. The respondent wrote to the Tribunal and the letter dated 02 November 2021 was referred to Employment Judge Cox who replied as follows:

“The Respondent’s application for an extension of time to present its response must be accompanied by a draft response it wishes to present. A further ET3 is enclosed”

19. The reply of EJ Cox was sent to the respondent by the tribunal on 18 November 2021 by way of Acknowledgement of Correspondence.

20. The respondent emailed the tribunal on 29 November 2021 attaching copy text messages. The email was as follows:

“Please see copy of text message from the claimant promising to bring me an invoice. I’d not once received an invoice even though she was self-employed. Looking into employment tribunals rules given that the claimant was self-employed the ET is not the correct venue for this claim. I look forward to taking direction from the ET on this matter.”

21. The claimant attended the CVP link for hearing and the Tribunal was satisfied that the respondent knew of the hearing and had chosen not to attend.

22. The Tribunal satisfied itself that no ET3 Grounds of Resistance had been received and considered that a determination could properly be made without a hearing.

23. The Judgment dated 29 November 2021 was sent to the parties on 13 January 2022 (the **“Judgment”**).

24. The respondent contacted the Tribunal office on 15 January 2022 and I treated the email as an application for reconsideration of the Judgment.

25. The respondent did not provide any cogent explanation in that email as to why:

25.1 the respondent failed to lodge an ET3 or application to extend time or attend the hearing on 29 November 2021

25.2 why reconsideration of the original decision is necessary or set out the grounds on which they contend that the original decision is wrong

25.3 why it is in the interest of justice to reconsider the Judgment

## **Conclusions**

26. The respondent's application for reconsideration of the Judgment is refused because:

26.1. the respondent was aware of the Tribunal hearing and did not attend;

26.2. has failed to set out why it is necessary in the interests of justice to reconsider the Judgment;

26.3. has failed to sufficiently set out the grounds or provide supplementary evidence / grounds on which they contend that the original decision is wrong.

27. In reaching these conclusions, I have considered the overriding objective set out at Rule 2 of the Employment Tribunal Rules and considered the interests of justice to both parties.

28. The respondent has contended that the Judgment should be reconsidered as it submits that the claimant was self-employed. I am not satisfied that cogent evidence has been provided by the respondent with regard to this. The assertion was known at the time of the hearing but the respondent has consistently failed to lodge an ET3 or application to extend time for doing so.

29. I find that the respondent has failed to explain why it contends that the Judgment should be reconsidered. I note that the size of the award is £1,194.00 and the respondent has failed to attend the hearing and has not explained a reasonable basis / a basis on which it contends that either:

29.1.1. the claimant's complaint should not have been upheld; and/or

29.1.2. the amount awarded in respect of the claim is incorrect.

30. The respondent has identified no basis for contending that my finding was not reasonably open to me on the evidence or that this matter gives rise to any basis upon which it is necessary in the interests of justice to reconsider the judgment.

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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