EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107570/2017

Held in Glasgow on 10 September 2019 (Final Hearing)

Employment Judge I McPherson

Mr Michael Ventesei	**Claimant** **Represented by:** **Mr Mark Allison - Solicitor**
(1) Platinum 24 Limited (T/a The Green Group) (Dissolved Company - formerly Company Number: SC500507)	**First Respondent** **Debarred**
(2) Mr Nauman Arshad	**Second Respondent** **No ET3 - No Appearance**
(3) Mr Naveed Raja	**Third Respondent** **No ET3 - No Appearance**
(4) The Green Group	**Fourth Respondent** **No ET3 - No Appearance**

E.T. Z4 (WR)

(5) The Green Group (Scotland) Ltd (Dissolved Company - formerly Company Number: SC496844)	**Fifth Respondent**
	No ET3 - No Appearance
Mr Nauman Arshad	**Interested Party**
	Not Present and Not Represented

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The **reserved** Judgment of the Employment Tribunal, in exercise of its powers under **Rules 70 to 72 of the Employment Tribunals Rules of Procedure 2013,** is as follows:

(1) Having further considered the case, in private deliberation, having heard the claimant's solicitor's application, made at the Case Management Preliminary Hearing on 10 September 2019, for variation of the Tribunal's Judgment dated 8, and entered in the Register and copied to parties on 9, January 201 9, and, insofar as necessary, its earlier Judgments, there being no objections, or any representations, from any of the respondents, the Tribunal, in terms of its powers under **Rule 5,** and acting on its own initiative, has **extended** the time limit specified in **Rule 71,** for making a reconsideration application, because it is in the interests of justice to do so, so as to allow the claimant's reconsideration application to be treated as timeously lodged with the Tribunal.

(2) Further, considering it to be in the interests of justice to do so, the Tribunal **reconsiders** the Tribunal's Judgment dated 8, and entered in the Register and copied to parties on 9, January 2019, and having done so, and on the information now available to the Tribunal, the Tribunal **grants** the claimant's solicitor's reconsideration application of 10 September 2019, and accordingly **varies** that previous Judgment of 8 January 2019 by substituting as the

claimant's employer, and thus the party liable to pay to the claimant the compensation previously awarded by the Tribunal, the now fourth respondents, **The Green Group,** but **otherwise confirms** that Judgment and Written Reasons, and the Tribunal considers it unnecessary to reconsider any of its earlier Judgments of 20 July 2018 and 6 September 2018.

(3) Consequentially, but subject always to any recoupment notice that may have been served by the Department for Work and Pensions, further to issue of the Tribunal's Judgment of 8 January 2019, the Tribunal **orders** that the fourth respondents shall pay to the claimant the compensation previously awarded by the Tribunal in the total amount of **FORTY FOUR THOUSAND, NINE HUNDRED AND THIRTEEN POUNDS, and NINETY FIVE PENCE (£44,91 3.95),** as set out in the Judgment of 8 January 201 9, and in the Written Reasons issued thereafter on 14 March 2019, on the bass that the Tribunal has varied that previous Judgment of 8 January 2019 by substituting as the claimant's employer, and thus the party liable to pay to the claimant the compensation previously awarded by the Tribunal, the now fourth respondents, **The Green Group.**

REASONS

Introduction

1. This case called again before me on Tuesday, 10 September 2019, at 10.00am, for a Case Management Preliminary Hearing conducted in private. Only the claimant's solicitor attended, and the five respondents were neither present, nor represented.

2. For the reasons more fully narrated in my further written Note and Orders of the Tribunal, dated 12 September 2019, and issued to parties under cover of a separate letter from the Tribunal, sent along with a **Rule 52** Judgment signed by me on that same date, the claimant's solicitor having intimated withdrawal of the claim against the **2nd, 3rd and 5th respondents,** in those circumstances, the Tribunal dismissed the claim as regards those three respondents only. Due to

administrative delay by the Tribunal staff, although that further Note and Orders, and **Rule 52** Judgment, were both signed by me on 12 September 2019, they were not copied and issued to parties until letters sent to them by the Tribunal on 10 October 2019.

3. Any further procedure in the remaining claims against the **1st and 4th respondents** was left to be determined, in due course, when this, my reserved Judgment and Reasons, was issued. I apologise to parties for the delay in issue of this Judgment and Reasons, occasioned by my recent extended absence from the office on sick leave, since 16 September 2019.

Background

4. This case has had a long and complicated procedural history, as evidenced by the fact that the Tribunal's casefile now extends to two volumes, covering the period from first presentation of the ET1 claim form, against the first respondents, Platinum 24 Ltd, almost two years ago now, on 20 December 2017, to present date.

5. For the sake of brevity, I refer to paragraphs 2 to 15 the Written Reasons dated and issued on 14 March 2019 for my Judgment dated 8, and entered in the Register and copied to parties, on 9 January 2019. That Judgment was issued, further to the Final Hearing held before me on 5 December 2018, which Written Reasons describe that long and winding journey through the Employment Tribunal. Those Written Reasons, comprising 67 paragraphs, extended over 23 pages, and they should be read together with the 8-page Judgment of 8 January 2019.

6. This latest Judgment and Reasons takes account of developments in this litigation since my subsequent Judgment dated 2, and issued to parties on 10, July 2019. Following an in chambers Reconsideration Hearing, held on 28 June 2019, which was heard without the need for an oral Hearing, and so on the papers only, to consider Mr Allison's reconsideration application of 10 April

2019, as amended on 26 June 2019, 1reconsidered that Judgment of 8 January 2019. Having done so, I confirmed it and its Reasons, without variation, for the reasons more fully set out in the Written Reasons given for that Judgment, extending to 102 paragraphs, over 47 pages. Again, for the sake of brevity, I refer to those Written Reasons for their full terms.

7. in particular, I refer to paragraph 66 of those Reasons, where I noted that I had refused Mr Allison's application to revoke that Judgment of 8 January 2019, as I did not consider that to be in the interests of justice. Further, and as per paragraph 69, I decided that the way forward was not to vary or revoke that Judgment, but to consider Mr Allison's application to add additional respondents, under **Rule 34,** which is what I ordered. Also, at paragraph 72, I stated that variation or revocation was not in the interests of justice, ***"at that stage",*** and, as per paragraphs 73 to 75, I gave Mr Allison a period of 3 months to apply to the Registrar of Companies to restore the dissolved company, Platinum 24 Limited.

8. At that Case Management Preliminary Hearing, on 10 September 2019, 1heard oral representations from Mr Allison, the solicitor for the claimant, seeking variation of certain of the Tribunal's previous Judgments, so as to substitute the now fourth respondent, **The Green Group,** as the claimant's employer, and thus the party liable to pay to the claimant the compensation previously awarded by the Tribunal.

9. Having heard those oral representations, I ordered, under **Rule 48,** that the listed Preliminary Hearing be treated as a Final Hearing, the Tribunal being properly constituted for the purpose, and I being satisfied that no party to the proceedings was materially prejudiced by the change.

Submissions for the Claimant

10. At the Hearing on 10 September 2019, Mr Allison made various points which, at my request, he confirmed in an email sent to me later that afternoon, along with

his comments on a recent Employment Appeal Tribunal judgment by His Honour Judge Auerbach **(Limoine v Sharma [2019] UKEAT/0094/19)** published the previous Friday, 6 September 2019, on the EAT online decisions website, which I drew to his attention, as well as his email providing me with copy of the ***MacPhail on Sheriff Court Practice*** extracts he had cited in his oral submissions, as also a hyperlink to a House of Lords judgment which he cited in his oral submissions when he referred me to **In Re B (Children) [2008] UKHL** 35, so that I could consider them during my private deliberation on his application for variation of previous Judgments of the Tribunal.

11. In that email of 10 September 2018 to the Tribunal, Mr Allison set forth the following specific points: -

"In relation to the competence of judgement being made against a trading name (in this case, the 4th Respondent, "The Green Group", I attach a copy of Chapter 4 of MacPhail: Sheriff Court Practice (Third Edition). This confirms that where a business trades under a trading name, then it is competent to sue them under that name (and by implication for the Tribunal to make an award against them in proceedings of this type) under that name (see para 4.86). In the event that "the Green Group" is a partnership rather than a trading name of a company, then it is equally competent to sue them under that partnership name (see para 4.94-4.95). As such, the Claimant asserts that it is not necessary for the Tribunal to determine who lies behind the Respondent "the Green Group" as it is a competent for them to be convened as a Respondent under that name, in any event.

In relation to the competence of the Tribunal varying the previous liability and remedy judgements to substitute the name of Respondent 1 (Platinum 24 Limited) with the name of Respondent 4 (The Green Group), the Claimant asserts:

1. That any *judgement can be reconsidered (rule 70);*

2. *That upon reconsideration, it is competent to vary the judgement, and the rule does not limit the nature or extent of the variation (rule 70);*

3. *That notice has already been given to the Respondents of the Claimant's application for reconsideration, pursuant to rule 72;*

4. *That the Respondent was also on notice of the possibility of that being revisited after service of the ET1 on the additional Respondents (paras 72-73 of the reconsideration judgement);*

5. *That the consequence to the 4th Respondent is the same in all substance as what the Tribunal would have been perfectly entitled to do in the more common situation of where they had failed to lodge an ET3 (as here) but that there was not already been a judgement against the 1st Respondent. A default judgement could have been issued in those circumstances in terms of rule 21(2). In this case, the Tribunal has already considered the available material and carried out the assessment exercise required by rule 92, including hearing evidence in relation to those aspects of the claim where further information was deemed necessary;*

6. *That the rules envisage not just addition but also the substitution of a Respondent at any time (rule 34);*

>As *to whether it is in the interests of justice to vary the judgement:*

(1) *Reference is made to the representations in the original reconsideration application et seq., which are incorporated herein for the sake of brevity;*

(2) *That there is now a combination of sources of information and/or evidence which support the conclusion that the most likely employer*

of the Respondent at the material time was The Green Group, specifically:

(a) that all bank payments during the court of the Claimant's employment came from an account in that name;

(b) that the website of The Green Group continues to hold out that designation as operating the business the Claimant says he worked for at the premises the Claimant said he worked at;

(c) That the 4th Respondent has been put on notice of the Claimant's assertion that they were his employer and have elected not to take steps to challenge or dispute that, formally or informally, allowing an inference to be taken;

(3) By comparison, in the case of each of the other possibilities there is either reason to doubt that they were the Claimant's employer or there is an absence of the clear evidence that there is in the case of the 4th Respondent.

(4) That the identity of the Claimant's employer is a primary fact on which the Tribunal would have had to make a determination given the nature of the claims, following the ratio of the House of Lords in In Re B (Children) [2008] UKHL 35, per Lord Hoffman at para 2 (see hyperlink to judgment: … That - assuming the tribunal is satisfied that on balance of probability the most likely employer of the Claimant at the material time(s) was the 4th Respondent - then the previous finding is erroneous and the interests of justice require that to be corrected.

(5) That, further, the Claimant's claims would otherwise be defeated in the sense he could not enforce them, by his good faith reliance on information he was given that a different Respondent was his employer, causing substantial injustice to him.

(6) That if the Tribunal proceeds in this way, the 4th Respondent will retain a remedy (i.e. reconsideration or appeal) to challenge the judgement, particularly if they later say they were not the Claimant's employer and there is good reason for their failure to enter appearance.

In relation to the recently reported case of ***Limone v Sharma UKEA T0094/19/RN ,*** *the Tribunal in this case has already complied with the requirements of rule 21(2) set out therein [see number 5 above], and the substance of rule 21(3) [which only arises if the Judge considers they need a hearing, which is not mandatory where rule 21 is engaged] has also been complied with as the Tribunal gave notice of today's hearing to all Respondents."*

Relevant Law

12. I was not fully addressed on the relevant law by Mr Allison, at this Hearing on 10 September 2019, because his application for reconsideration of previous Judgments was made orally, rather than in writing, but he did, in course of his oral submissions, and confirmed in his subsequent email later that day to the Tribunal, refer me to certain legal case law and statutory provisions that he felt were appropriate.

13. In considering his email of 10 September 2019, as reproduced above at paragraph 10 of these Reasons, I note that there is a minor typographical error in spelling the name of the appellant in the EAT case I cited, but, more significantly, at paragraph (5) of his submissions, Mr Allison has referred to ***"the assessment exercise required by rule 92".***

14. I have taken Mr Allison's reference to **Rule 92** to be in error, and an accidental slip on his part, for that rule relates to correspondence to the Tribunal, and copying in the other parties. In context, and as confirmed by the final unnumbered paragraph of his submissions, commenting on **Limoine,** I have taken the appropriate reference to be to **Rule 21(2).**

15. For the purpose of writing up this reserved Judgment and Reasons, I have carefully considered his email of 10 September 2019, with attachments, as described at paragraphs 10 and 11 above, and I also given myself a self-direction on the relevant law.

16. The relevant statutory provisions are to be found within **Rules 2, 5, 29, 30, 34, and 70 to 73 of the Employment Tribunals Rules of Procedure 2013,** which, I need not reproduce in full here, *verbatim,* but only note that their subject matters provide as follows:

- **Rule 2 -** The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly.
- **Rule 5 -** Extending or shortening time.
- **Rule 29-** Case Management Orders.
- **Rule 30 -** Applications for Case Management Orders.
- **Rule 34 -** Addition, substitution, and removal of parties.
- **Rules 70 to 73 -** Reconsideration of Judgments

17. As I previously detailed the relevant law on Reconsideration of Judgments, in my Written Reasons of 2 July 2019, I refer back, for ease of reference, to paragraphs 26 to 43 there, and to the case law authorities I then cited, and drew from. In particular, I again refer to, and gratefully adopt, what Her Honour Judge Eady QC, the EAT Judge, held in **Outasight VB Limited v Brown [2015] ICR D11,** at paragraphs 27 to 38, and in her later judgment in **Scranage v Rochdale Metropolitan Borough Council [2018] UKEAT/0032/17,** at paragraph 22.

18. So too, I refer again to what I there recorded about what had been held by the Court of Appeal in its judgment, in **Ministry of Justice v Burton & Another [2016] EWCA Civ.714, [2016] ICR 1128,** where Lord Justice Elias, at paragraph 25, referred, without demur, to the principles ***"recently affirmed by HH Judge Eady in the EAT in Outasight VB Ltd v Brown UKEAT/0253/14."*** ; and, at paragraph 21 in **Burton,** Lord Justice Elias had stated that:

> ***"An employment tribunal has a power to review a decision "where it is necessary in the interests of justice": see Rule 70 of the Tribunal Rules. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J, as he was, pointed out in Newcastle on Tyne City Council v Marsden [2010] ICR 743, para. 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily..."***

19. Further, and as per paragraphs 29 to 31 of my previous Written Reasons dated 2 July 2019, I have again referred myself to, and gratefully adopt, the approach to be taken to applications for reconsideration as set out in the judgment of Mrs Justice Simler, then President of the EAT, in **Liddington v 2Gether NHS Foundation Trust [2016] UKEAT/0002/16/DA.** The Employment Tribunal is required to:

> ***"1. 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;***

> ***2. 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***
>
> ***3. give reasons for concluding that there is nothing in the grounds advanced by the (applicant) that could lead him to vary or revoke his decision. "***

20. In paragraphs 34 and 35 of the Judgment in **Liddington,** the learned EAT President, Mrs Justice Simler, stated as follows:

> ***"34. In his Reconsideration Judgment the Judge identified 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. In this case, the Judge addressed each ground in turn. He considered whether was anything in each of the particular grounds relied on that might lead him to vary or revoke his decision. For the reasons he gave, he concluded that there was nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision, and accordingly he refused the application at the preliminary stage. As he made clear, 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, and the opportunity for appeilate intervention in relation to a refusal to order reconsideration is accordingly limited.***
>
> ***35. Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing reconsideration accordingly.***

Discussion and Deliberation

21. As Mr Allison's reconsideration application was made by him on behalf of the claimant, for me to reconsider and vary earlier Judgments of the Tribunal, by substituting the name of Respondent 1 **(Platinum 24 Limited)** with the name of Respondent 4 **(The Green Group), Rule 73,** relating to reconsiderations by the Tribunal on its own initiative, does not fall to be considered further.

22. His application is an application for reconsideration of a Judgment under **Rules 70 to 72,** rather than a case management application, under **Rules 29 and 30,** to vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice.

23. That is because **Rule 1(3)(a)** defines **"case *management order"*** as being ***"an order or decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment",*** and my earlier liability and remedy Judgments clearly being ***'judgments"*** as defined in **Rule 1(3)(b).**

24. Further, as always, there is the Tribunal's overriding objective, under **Rule 2,** to deal with the case fairly and justly. The only ground in the current 2013 Rules is that a judgment can be reconsidered where ***"/t is necessary in the interests of justice"*** to do so. As Lord Justice Elias held, in **Burton,** ***'the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way...".*** That is the same legal test as would have applied if this was an application under **Rules 29 and 30** to vary, suspend or set aside an earlier case management order. ****7n the interests of justice"*** means justice to both sides of any claim before the Tribunal.

25. Mr Allison's application for reconsideration and variation of previous Judgments was made orally at the Hearing, on 10 September 2019, which would be in accordance with the procedure at **Rule 30,** which allows for an application to vary, suspend or set aside an Order to be made either at a Hearing, or presented in writing to the Tribunal, and **Rule 71** allows a reconsideration of a Judgment application to be made in the course of a Hearing, otherwise it shall be presented in writing and copied to all other parties.

26. In the present case, while none of the respondents were present, or represented, I took the view that they had had previous Notice of Claim, previous Judgments, and of the listed Hearing on 10 September 2019, and so I saw no material prejudice to the four additional respondents in hearing Mr Allison's application for reconsideration and variation, when none of them had taken any steps, formal or informal, to participate in these Tribunal proceedings. The principle that justice must be done, and be seen to be done, as between the parties, means that, necessarily, the claimant must be given the opportunity to pursue his claims against the proper respondent, particularly where, as here, the Tribunal has already determined that his claims were successful, and judgment has been made in his favour, both as regards liability and remedy.

27. While, in terms of **Rule 71,** an application for reconsideration of a Judgment should be presented within 14 days of the date on which the original decision was sent to parties (being the liability and remedy Judgment sent on 9 January 2019) or, as in this case, within 14 days of the later date on which Written Reasons were sent to parties, being 14 March 2019, there was a previous application for reconsideration, by the first respondents, where my Reconsideration Judgment dated 2 July 2019 confirmed the Judgment of 8 January 2019, issued on 9 January 2019, and the Written Reasons of 14 March 2019.

28. In considering the reconsideration application of 10 September 2019, seeking reconsideration of the Judgment of 8 January 2019, while there was no appearance by, or representation from any of the respondents, at this Hearing, and so no objections from any of them, as regards any time bar objection to the claimant's reconsideration application, I note and record here that, in terms of my powers under **Rule 5,** I have, on my own initiative, extended the time limit specified in **Rule 71,** because I consider it in the interests of justice to do so.

29. Further, and in any event, while the respondents and Mr Arshad did not attend, and they were not represented at the Hearing on 10 September 2019, they were aware of these Tribunal proceedings, by virtue of correspondence sent to them by the Tribunal (and not returned by the Royal Mail as unknown, or gone away), and I took into account all of the information available to me from the Tribunal's casefile, and online searches of the Companies House website.

30. The first respondents, Platinum 24 Ltd, having been dissolved, on 8 January 2019, via voluntary strike-off applied for by its then director, Mr Nauman Arshad (the second respondent), remains a dissolved company, and Mr Allison had advised the Tribunal, on 26 August 2019, that it was <u>not</u> the claimant's intention to have the dissolved company, Platinum 24 Ltd, reinstated to the Register of Companies.

31. As regards the fifth respondents, The Green Group (Scotland) Ltd, as discussed with Mr Allison, that company was itself dissolved, on 6 August 2019, via voluntary strike-off applied for by its then director, Mr Naveed Raja (the third respondent), and it too remains a dissolved company.

32. Further, I noted how, in his email to the Tribunal, on 20 August 2019, Mr Allison had stated that that company being a dormant company, and there appearing to be no meaningful prospects of enforcement of any Judgment against it, the claimant did not intend to proceed with his claim against them.

33. It was on that basis that the fifth respondents were included in the **Rule 52** judgment that I issued following the claimant's solicitor's withdrawal of the claim against the 2nd, 3rd and 5th respondents. That **Rule 52** Judgment signed by me on 12 September 2019 was entered in the Register, and copies sent to all parties, by the Tribunal, by ordinary post, on 10 October 2019.

34. At the Hearing, on 10 September 2019, I took the view that I could, under **Rule 48,** order that the listed Preliminary Hearing be treated as a Final Hearing, the Tribunal being properly constituted for the purpose, and I being satisfied that no party to the proceedings was materially prejudiced by the change.

35. Specifically, I took into account, in that regard, there being no appearance by or representations from any of the respondents, or Mr Arshad as interested party, and none of them having lodged an ET3 response, nor sought an extension of time to do so, plus the claimant's solicitor's oral intimation at this Hearing of withdrawal of the claim against the 2nd, 3rd and 5th respondents.

36. Against that background, I regarded as well-founded Mr Allison's argument that to relist the case for a further Hearing would cause further delay and expense to the claimant, as also to the public purse of the Tribunal administration, and thus be inconsistent in those regards with the Tribunal's overriding objective in terms of **Rule 2** to deal with the case fairly and justly.

37. On the matter of **Rule 34 -** Addition, substitution, and removal of parties - I referred to that in paragraph (3) of my Judgment of 2 July 2019, and the written Note and Orders of the Tribunal issued on that date, adding the four additional respondents under **Rule 34.** So too I refer back, for ease of reference, to my narration of the relevant law in that regard, at paragraphs 78 to 86 of my Written Reasons of 2 July 2019. At paragraph 86, I noted that **Rule 34,** when read in conjunction with **Rule 29,** applies ***"at any stage of the proceedings".***

38. Having carefully considered Mr Allison's submissions, and also my own obligations under **Rule 2 of the Employment Tribunals Rules of Procedure 2013,** being the Tribunal's overriding objective to deal with the case fairly and justly, I consider that all respondents in these Tribunal proceedings have had a reasonable opportunity, since my Judgment of 2 July 2019, together with separate written Note and Orders, was issued to all parties, to enter the proceedings and participate to explain their position to the Tribunal if they disputed that they should not have been added in as an additional respondent.

39. The first respondents, Platinum 24 Ltd, being a dissolved company, clearly no longer exist, and so could not have participated further. The inescapable fact of the matter is that they, in lodging their ET3 response, on 2 February 2018, did <u>not</u> dispute that the claimant was their employee.

40. They confirmed, as correct, the ACAS early conciliation details, as also the claimant's stated employment details, and his earnings and benefits details. The claim against them was defended on its merits, as per a 10-paragraph attached paper apart with detailed grounds of resistance denying the claimant's allegations in his ET1 claim form.

41. At no later stage, even when, for a period, the first respondents were represented by an employment lawyer, did they ever raise a preliminary issue about the identity of the employer.

42. In good faith by the claimant, these Tribunal proceedings continued on that basis, until the claimant's solicitor's attempts to enforce the Judgment of 8 January 2019 against the first respondents led to his earlier application of 10 April 2019 for reconsideration of that Judgment, which application I refused in my Judgment of 2 July 2019.

43. With a limited company being dissolved (as opposed to, e.g., in liquidation), there is no legal entity in existence against whom any Tribunal judgment can be enforced, unless the company is restored to the Register of Companies. The claimant, as per Mr Allison's email to the Tribunal, on 26 August 2019, advised the Tribunal that it was not the claimant's intention to have the dissolved company, Platinum 24 Ltd, reinstated to the Register of Companies. That remained his position at the Hearing before me on 10 September 2019.

44. As regards the fifth respondents, the Green Group (Scotland) Ltd, although they were only recently dissolved, on 6 August 2019, and certainly they were not at the stage when they were added in under **Rule 34,** they did not lodge any ET3 response, after Notice of Claim was served on 10 July 2019, nor did their director, Mr Raja, as second respondent.

45. At the Hearing before me, on 10 September 2019, Mr Allison stated that he was withdrawing the claim against the second and third respondents, Mr Arshad and Mr Raja, because there was no evidence to suggest that the claimant had been directly employed by either of them in their own right, rather than as a director, or shadow director, of a limited company, and he did not consider that the Tribunal could infer any personal employment relationship between either of those persons and the claimant from the established facts in this case.

46. In seeking to continue the claim against the fourth respondents, The Green Group, and have previous Judgments of the Tribunal varied, so as to substitute the fourth respondent, as the claimant's employer, and thus the

party liable to pay to the claimant the compensation previously awarded by the Tribunal, Mr Allison advised me that the real issue in focus in this litigation is who employed the claimant at the effective date of termination of his employment.

47. In good faith, Mr Allison submitted, Tribunal proceedings had been raised against Platinum 24 Ltd, and the first respondents' ET3 response did not challenge that they were not the employer. Indeed, their ET3 confirmed, as correct, that they were the claimant's employer.

48. As bank statements showed payments to the claimant from the Green Group, in respect of wages received, Mr Allison, at first, submitted to me that he was inviting me, of new, to revoke the earlier Judgments against the first respondents, and either to make a Judgment against the other respondents, or fix some evidential Hearing to determine the issue of the claimant's employer.

49. Mr Allison then submitted that he sought to have the Judgments against Platinum 24 Ltd varied to be against The Green Group, as its trading name, as the claimant now understands that they were his employer as they paid his wages. As such, he invited me to vary both liability and remedy Judgments previously issued by the Tribunal to substitute The Green Group for Platinum 24 Ltd as, on the balance of probability, he submitted that they were the ***"most likely employer of the claimant. "***

50. He further stated that a revocation of earlier Judgments would ***"undo the past",*** and while Mr Arshad had been an interested party in these proceedings, Mr Allison confirmed that he was withdrawing the claim against both Mr Arshad, and Mr Raja, as second and third respondents, because, in his view, there is no inference that Mr Raja was the claimant's employer in his own right, and Mr Arshad, as the company accountant and director of Platinum 24 Ltd, was not his employer either, as there was nothing to infer

that, as sole director of the first respondents, he had employed the claimant in his own right

51. At that stage, reading from his laptop, and online references from ***MacPhail on Sheriff Court Practice,*** Mr Allison submitted to me that it is in order to issue Judgment against a trading name, albeit to do so may be a problem for the claimant at the stage of instructing Sheriff Officers to do diligence to enforce a Tribunal Judgment, if unpaid by a respondent.

52. Mr Allison further stated that all the additional respondents in this case had been put on notice of the claimant's position, since the earlier reconsideration application was intimated by him, on 10 April 2019, and, in the absence of any co-operative respondent, the claimant cannot produce anything further to the Tribunal, and it should be noted that the claimant has acted throughout in good faith in these Tribunal proceedings.

53. On that basis, Mr Allison invited me to vary the previous Judgments, to substitute the fourth respondent for the first respondent, and to do nothing to revoke the Judgments against the first respondents, just because they are now dissolved. He re-iterated that, in his view, there is ***"colourable evidence"*** to suggest that the claimant's employer was **The Green Group.**

54. Further, Mr Allison submitted, as revocation of any Judgment would require a re-hearing, he stated that that was not appropriate in the present case, as it would raise issues about the status of the previous evidence accepted by the Tribunal, and its findings. He then referred me to the House of Lords judgment **In Re B,** which he precised, and where he later provided the full judgment for my perusal, as an attachment to his email to the Tribunal on the afternoon of 10 September 2019, sent after the close of the Hearing before me.

55. He submitted that I did not need to make a new finding about the claimant's employer, as, if I have sufficient information, I could make a finding, as a

Judge might ordinarily do when issuing a Default Judgment against a respondent who has not defended a claim brought against them.

56. At that stage, I drew to Mr Allison's attention Judge Auerbach's very recent EAT judgment in **Limoine v Sharma,** and as he was not aware of it, I handed him my printed copy, and stated that I would wish his comments on that judgment, and any issues arising for my determination of his application in the present case. He made comment in his email to the Tribunal later that afternoon, as I have referred to earlier at paragraphs 10 and 11 of these Reasons.

Disposal

57. I turn now to consider the issues before me, as I see them, and, in particular, the following:

(a) is it in the interests of justice that I should reconsider my Judgment of 8 January 2019, or any earlier Judgments?

(b) if so, should I confirm any such Judgment, or vary or revoke it?

58. In the somewhat unusual, if not unique set of circumstances pertaining in this case, I am, after reflection and careful consideration, satisfied that it is in the interests of justice to reconsider my Judgment of 8 January 2019. 1regard Mr Allison's submissions in that regard to be well-founded, and, further, it is of note that there have been no objections, or any representations, of any kind from any of the additional respondents, suggesting otherwise.

59. I consider it unnecessary to reconsider any of the Tribunal's earlier Judgments, as the Judgment of 20 July 2018, issued on 27 July 2018, debarred the now first respondents from the proceedings, and otherwise was a Default Judgment for parts of the case, and assigned a Remedy and Final Hearing for the case, and the subsequent Judgment of 6 September 2018,

issued on 7 September 2018, was a **Rule 52** dismissal judgment in respect of the claimant's breach of contract claim. Those Judgments do not require to be varied or revoked.

60. As regards the Judgment of 8 January 2019, following upon the Remedy / Final Hearing on 5 December 2018, it does not require to be revoked, as what has been ventilated there, and the subject of evidence and judicial findings, does not require to be reconsidered, by way of a second bite at the cherry, as that would fly in the face of the Tribunal's overriding objective, and the underlying public policy principle in all judicial proceedings that there should be finality in litigation.

61. What has happened here is that, in light of further enquiries made after diligence by Sheriff Officers was unsuccessful at the hands of the claimant seeking to enforce the 8 January 2019 Judgment in his favour against Platinum 24 Limited, it is clear, with the benefit of hindsight, that the claimant and Tribunal have both been misled by misrepresentation on the part of the first respondents, in their ET3 response lodged resisting the claim, as to the proper identity of his employer.

62. The ET3 response for the first respondents not having disputed that they were the claimant's employer, there was no reason to believe that that was an issue requiring judicial determination. As Mr Allison stated, in his reconsideration application of 10 April 2019, and as reproduced at paragraph 92 of my Reasons dated 2 July 2019, ***"what has occurred here is a sham, deliberately calculated to avoid liability by the correct employer of Mr Ventesei for the claims which he has brought, "***

63. Albeit my Judgment of 8 January 2019 was later extracted, on application to the Tribunal administration by the claimant's solicitor, on 21 February 2019, with Extract issued by the Secretary of the Tribunals, on 26 February 2019, in accordance with **Section 15(2) of the Employment Tribunals Act 1996,** and diligence thereafter attempted on behalf of the claimant, by serving a

Charge for Payment on Platinum 24 Limited, but unsuccessful against those first respondents, there is nothing in the Tribunal's Rules of Procedure to say that that Judgment of 8 January 2019 cannot be reconsidered by the Tribunal: indeed, **Rule 70** makes clear that **"any *Judgment*** can competently be brought under reconsideration. This is consistent with the approach I took at paragraph 47 of my Reasons dated 2 July 2019.

64. In these circumstances, the matter which now arises is what am I to do on reconsidering that Judgment of 8 January 2019. On the information now available to the Tribunal, I have decided that it is not appropriate to revoke that Judgment, for that would not advance the interests of justice, in circumstances where the claimant, through his solicitor, has, in good faith, sued the limited company that he believed, and they held out as being, his legal employer, namely Platinum 24 Limited.

65. Having secured Judgment against Platinum 24 Limited, the claimant, through his solicitor, Mr Allison, tried to enforce that Judgment in his favour by instructing Sheriff Officers to seek from the now first respondents payment of the sums ordered payable to him by the Tribunal, but without success. Of course, the first respondents are now a dissolved company, and so no longer exist.

66. While I consider that it is appropriate that I grant Mr Allison's reconsideration application of 10 September 2019, I do not consider it appropriate to revoke that Judgment, as Mr Allison initially asked me to do, for the very reason that, when he then sought variation, he himself identified, being that a revoked Judgment would require the Tribunal to take the original decision again, either by way of a fresh Default Judgment under **Rule 21,** or at a further Final Hearing.

67. I do not consider it appropriate to revoke the Judgments against the first respondents and issue a fresh Default Judgment on liability and remedy against the fourth respondents.

68. Further, I agree with Mr Allison that to relist the case for a further Hearing against the fourth respondents, **The Green Group,** would cause further delay and expense to the claimant, as also to the public purse of the Tribunal administration, and thus be inconsistent in those regards with the Tribunal's overriding objective in terms of **Rule 2** to deal with the case fairly and justly.

69. The fourth respondents, **The Green Group,** have had the opportunity to defend the claim brought against them, after service on them, on 10 July 2019, as an additional respondent. They have failed to do so. In terms of **Rules 86 and 90,** there is a presumption that service has been properly made upon them, unless the contrary is proved by them. The correspondence sent to them by the Tribunal has not been returned.

70. Further, the fourth respondents have not challenged Mr Allison's assertion that there is ***"colourable evidence"*** that they were the claimant's employer at the material times complained of by him in his ET1 claim form.

71. Accordingly, after careful consideration, I have decided that the appropriate disposal of Mr Allison's successful reconsideration application is for me to vary that previous Judgment of 8 January 2019 by substituting as the claimant's employer, and thus the party liable to pay to the claimant the compensation previously awarded by the Tribunal, the now fourth respondents, **The Green Group.** Otherwise, I confirm that Judgment, and the Written Reasons.

72. I have consequentially ordered that, subject always to any recoupment notice that may have been served by the Department for Work and Pensions, further to issue of the Tribunal's Judgment of 8 January 2019, the fourth respondents, **The Green Group,** shall pay to the claimant the compensation previously awarded by the Tribunal in the total amount of **£44,913.95,** as set out in the Judgment of 8 January 2019, and in the Written Reasons issued thereafter on 14 March 2019.

73. In the particular circumstances of this case, it seems to me that this is an appropriate and proportionate disposal of the reconsideration application, and it produces a just and fair outcome. If, however, the fourth respondents dispute their liability to the claimant, in terms of this Judgment, and its order for payment by them, then they have the right to seek reconsideration of this Judgment, under **Rules 70 to 72,** within 14 days of it being sent to them.

74. If they do so, then any such application should be made by them in writing to the Tribunal, preferably by e-mail, within that 14-day period, with copy to the claimant's solicitor, at the same time, explaining why it is in the interests of justice to grant them a reconsideration.

75. In particular, any such reconsideration application by the fourth respondents should also explain why they failed to lodge an ET3 response defending this claim, after Notice of Claim was served on them, on 10 July 2019, and be accompanied by a completed ET3 response, setting forth their full grounds for resisting the claim, together with an application to the Tribunal under **Rule 20** to be allowed an extension of time to enter a late response disputing the claim.

Employment Judge: I McPherson
Date of Judgment: 29 November 2019
Entered in register: 3 December 2019
and copied to parties