



EMPLOYMENT TRIBUNALS

Claimant: Ms L Irvine

Respondent: Mr Paras Vijay Patel

JUDGMENT

The respondent's application dated **7 December 2021** for reconsideration of the judgment sent to the parties on **9 June 2021** is refused.

REASONS

1. The Employment Tribunals Rules of Procedure at Rule 20 deal with applications for extension of time for presenting response to a claim. The rule provides
 - (1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.
 - (2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.
 - (3) An Employment Judge may determine the application without a hearing.
 - (4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside.

At Rule 21 it is provided that

- (1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.
 - (2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone. Where a Judge has directed that a preliminary issue requires to be determined at a hearing, a judgment may be issued by a Judge under this rule after that issue has been determined without a further hearing.
 - (3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.
2. The respondent failed to provide a response to the claim, did not make any application for an extension of time and has not produced a draft of the response which the respondent wishes to present or provided an explanation of why that is not possible. The respondent has made an application for reconsideration of the judgment.
 3. Rule 70 sets out the principles.

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

Rule 72 sets out the process for dealing with a reconsideration application. Rule 72 (1) provides that

An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the

parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

4. The respondent has set out the basis of the application for reconsideration in an email dated 7 December 2021 from the respondent's legal representative. The respondent has also provided a bundle of documents prepared for an application made to the High Court (Oxford District Registry) for stay of execution. The bundle of documents does not contain a draft response to the claim.
5. The grounds on which the claimant makes an application for reconsideration appear to me to be (a) that the claimant became aware of proceedings in late September 2021, (b) that the process was sent to the wrong address, (3) that the respondent did not receive notice of the tribunal claim.
6. I have reviewed the employment tribunal file.
7. On 23 November 2019 the employment tribunal sent a case management order to the parties including the respondent Mr Patel. The correspondence was addressed to "Mr PV Patel" and sent to 2 addresses, Victoria House, 18 Dalston Gardens, Stanmore, Middlesex, HA7 1BU and also at 12 Barton Road, Comberton, Cambridge CB23 7BP. In his witness statement in support of the application for a stay of execution the respondent confirms that the latter address is his home address.
8. On 8 December 2019 the employment tribunal sent to "Mr Paras Vijay Patel" a copy of the ET1 claim form. This was sent to the respondent at Victoria House, 18 Dalston Gardens, Stanmore, Middlesex, HA7 1BU and also at 12 Barton Road, Comberton, Cambridge CB23 7BP.
9. On 8 May 2020 a notice of preliminary hearing by telephone to take place on the 18 May 2020 at 10 am was sent to "Mr P V Patel" at the addresses Victoria House, 18 Dalston Gardens, Stanmore, Middlesex, HA7 1BU and also at 12 Barton Road, Comberton, Cambridge CB23 7BP.
10. On 4 June 2020 a Rule 21 Judgment signed on the 8 May 2020 was sent to the parties. The judgment was sent to "Mr Paras Vijay Patel" at the addresses Victoria House, 18 Dalston Gardens, Stanmore, Middlesex, HA7 1BU and also at 12 Barton Road, Comberton, Cambridge CB23 7BP.
11. Following written representations from the claimant a judgment with reasons was made on 15 June 2020 and sent to the parties on 13 August 2020. The judgment was sent to "Mr Para Vijay Patel" at the addresses Victoria House, 18 Dalston Gardens, Stanmore, Middlesex, HA7 1BU and also at 12 Barton Road, Comberton, Cambridge CV23 7BP. In the application for reconsideration of the judgment the respondent accepts that

the judgment with reasons was received by him. I note that it is the only document that was incorrectly addressed but it was delivered nonetheless.

12. On 9 June 2021 a corrected judgment was sent to the parties. The corrected judgment does not appear to have been sent to the respondent Mr Patel but was sent to VRP and Sons Limited at 36 Bicester Road, Launton, Oxfordshire OX 26 5DQ.
13. Only one document was sent by the employment tribunal to the wrong address, nonetheless the error did not prevent the delivery of the letter. The error was transposing a V for a B in the post code of the address for the judgment of the 15 June 2020 sent to the parties on 13 August 2020.
14. The respondent says that he was not given notice of the employment tribunal claim and had no knowledge of the claim. I note that a copy of the ET1 was sent to the respondent at the correct address on 8 December 2019. The letter was not returned to the employment tribunal in the post as undelivered. A notice of preliminary hearing was sent to the parties on 18 May 2019 the copy to the respondent was sent to his correct address and was not returned to the employment tribunal as undelivered. A rule 21 judgment made on 18 May 2020 was sent to the respondent on 4 June 2020 at the correct address. The judgment with reasons made on the 15 June 2020 and sent to the parties on the 13 August 2020 was sent to the respondent at an incorrect address but was nonetheless delivered. There was no application made by the respondent to the employment tribunal on receipt of this document.
15. The corrected judgment was not sent to the respondent. However, I note that the correction was to add an 's' after Para to read 'Paras'.
16. Having taken into account all the matters set out above I have come to the conclusion that the process was properly followed by the employment tribunal in providing to the respondent notice of the claim and hearings. The respondent did not file a response or engage with the tribunal proceedings. None of the employment tribunal's correspondence was returned as undelivered. I am not satisfied that the respondent did not know of the proceedings until late September 2021.
17. If I am wrong about that and the claimant did not know about the proceedings until September 2021 the claimant did not make an application for an extension of time to file a response or a reconsideration of the employment tribunal judgment until 7 December 2021. There is no explanation in the email setting out grounds for the application for reconsideration for the delay in making the application for a reconsideration.
18. The respondent has not provided a draft response to the claim. If the respondent's application for reconsideration was granted a rule 21 judgment would be made in any event because there is no response or application to file a response late accompanied by a draft of the response to be relied on.

19. I am not satisfied that the interests of justice require the judgment of the employment tribunal to be varied or revoked, a reconsideration of the judgment is not in the interests of justice. In the circumstances I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for a reconsideration is refused.

Employment Judge Gumbiti-Zimuto

Date: 28 January 2021

JUDGMENT SENT TO THE PARTIES ON

20 February 2022

FOR THE TRIBUNAL OFFICE