



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4119209/2018

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Held in Glasgow on 7 January 2019

Employment Judge: Mary Kearns

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Mr M McGlinchey

**Claimant
In person**

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British Gas (Centrica)

**Respondent
Represented by:
**Ms K Docherty
Solicitor****

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 The Judgment of the Employment Tribunal on the respondents' application for reconsideration is that:

(1) the original decision is revoked; and.

(2) the time for presenting the ET3 response is extended to 22 October 2018 and the ET3 received from the respondent on that date is accepted.

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REASONS

Applicable Law

1. Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides, so far as relevant as follows:

"RECONSIDERATION OF JUDGMENTS

E.T. Z4 (WR)

Principles

5 *70 A Tribunal may, either on its own initiative...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.*

Application

10 *71 Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*

15 **Process**

72(1) 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...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.

25 *(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

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Findings in Fact

2. The claimant was employed by the respondent as a customer service agent from 1 May 2009 to 31 May 2018 when he was dismissed. He claims that his dismissal was unfair. His ET1 was presented to the Tribunal on 12 September 2018. The claim was served on the respondent with a covering letter notifying them that the last date for lodging their response was 11 October 2018. The respondent failed to present a response to the claim. A default Judgment (liability only) was issued on 18 October 2018 under Rule 21. By email to the Tribunal dated 22 October 2018 the respondent applied for a reconsideration of the Rule 21 Judgment and an extension of time for lodging the ET3 which accompanied their applications.
3. The address the claimant had for the respondent was “British Gas (Centrica), Murdoch House, Bothwell Road, Uddingston, North Lanarkshire, G71 7UD” and that was the address he put on his ET1 application form. The address with the 7UD post code is the address for the respondent’s ‘Homecare’ division, which deals with boiler repairs and insurance cover. The correct address for the respondent is “Murdoch House, 29 Bothwell Road, Uddingston, G71 7TW”. Mail to the 7UD post code is treated differently from the respondent’s mail. At the time of service of the ET1 on 12 September 2018 the 7UD mail was opened by a machine, packaged without being read, and sent to an address in Dunstable where it would be scanned by staff and uploaded onto an administrative system. By contrast, mail to the 7TW address would be opened, read and sent to the correct addressee.
4. The mailroom used by the respondent had a specific instruction in relation to Tribunal applications and correspondence. These were to be scanned immediately and sent to the respondent’s UK Relations Department. The hard copy was then to be sent by recorded delivery to their HR department.
5. Towards the end of September/ beginning of October 2018 it came to the respondent’s notice that death certificates and powers of attorney were sometimes coming in to the 7UD address. The mailroom were therefore

instructed to look out for these. It was due to this instruction that the claimant's Rule 21 Judgment was identified on 19 October. It was immediately scanned to the UK Relations department in accordance with the procedure. The respondent's solicitors were instructed and they emailed the Tribunal that day requesting a copy of the ET1. The clerks were unable to expedite this request and a draft ET3 was therefore presented on 22 October 2018 (using information from the claimant's appeal), together with an application for an extension of time for it to be received. The ET3 was 7 days late.

Discussion and decision

6. The test I must apply to this application is whether it is necessary in the interests of justice to reconsider the original decision. All relevant circumstances should be taken into consideration in order to decide whether the balance of justice lies in granting or refusing the application. I must consider the prejudice to the respondent who is seeking the reconsideration as well as the prejudice to the claimant in whose favour judgment has been issued. I must also take into account the public interest in the finality of litigation. The reconsideration rules must be exercised having regard to the over-riding objective of dealing with cases fairly and justly.

7. The respondent's reason for not presenting its response to the claim at the relevant time was that they did not receive the ET1. In support of their application they have led evidence from Mr David Robertson, Mailroom Porter, which I accept. Whilst I understood the claimant's reasons for using the 7UD post code, which he had checked online, the respondent's explanation set out in the findings in fact above, is plausible and I am satisfied that for the reason they gave, they did not receive the original copy of the ET1.

8. The claim is for unfair dismissal and the respondent has set out in their ET3 a cogent defence to it. Obviously, whether it is accepted ultimately will depend on the evidence given at any hearing but the defence to the claim is,

put shortly, that the claimant was fairly dismissed for a reason relating to his conduct.

5 9. I have applied the balance of prejudice to determine the issue of whether it is necessary in the interests of justice to reconsider the original decision. If it were to be made out in evidence that the respondent's dismissal of the claimant was fair, the claimant would not be entitled to compensation. Put another way, the respondent may have a reasonable prospect of successfully responding to the claim, depending upon whether its evidence is accepted or not. The prejudice to the claimant in revoking the Judgment is obvious. He would lose the benefit of the Judgment. However, it appears to me that this is out-weighed by the prejudice to the respondent of not having an opportunity to present its defence. I have also taken into account the reason given by the respondent for not defending the case timeously. I have taken into account the public policy interest in the finality of litigation. However, balancing the relative prejudice to each party and keeping in mind the over-riding objective I have concluded that it is necessary in the interests of justice to revoke the original decision and to extend time for presentation of the ET3 to 22 October 2018. The ET3 is therefore accepted and the case proceeds.

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25 **Employment Judge: M Kearns**
Date of Judgment: 7 January 2019
Entered in register: 8 January 2019
and copied to parties

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