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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109279/2021

**Reconsideration Application Hearing under Rule 71
by Cloud Video Platform (CVP) on 10 January 2022**

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Employment Judge A Strain

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Ms M Davidson

**Claimant
Represented by:
Mr P Sangha,
Counsel**

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Cat 1 Property Limited

**Respondent
Represented by:
Mr I Akhtar,
Manager**

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DECISION OF THE EMPLOYMENT TRIBUNAL

The Employment Tribunal refuses the respondent's application for reconsideration of the Employment Tribunal Judgment made on 25 June 2021

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REASONS

Background

Application for reconsideration

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1. The Respondent presented an application for reconsideration of the Tribunal's judgment dated 25 June 2021 by letter of 19 July 2021 and email of 6 August 2021.

2. The Tribunal judgment had been made in absence of the Respondent and no ET3 had been lodged.
3. The basis of the application was that the Respondent had passed the Tribunal papers to solicitors and that the solicitors had failed to inform the Respondent of any “events and dates”. Further, the Respondent’s manager, Mr Imran Akhtar, had been off ill for 3 months “whilst this was going on”. It was asserted that the Claimant had “quit” her job and that the Respondent would be prejudiced if it were not allowed to defend the claim.
4. The Claimant had responded opposing the application for reconsideration by letter of 5 August 2021. In substance the opposition was on the basis that the Tribunal documentation and correspondence from the Claimant had been sent to the Respondent. The Respondent’s explanation for not defending the claim was unsatisfactory, there would be prejudice to the Claimant and it would not be in accordance with the overriding objective or necessary in the interests of justice to grant the application.
5. The Tribunal judge considered that a hearing should be fixed to determine the application for reconsideration.

Hearing

6. The Claimant was represented by Mr P Sangha, Counsel.
7. The Respondent was represented by Mr Imran Akhtar, Manager who also gave evidence on behalf of the Respondent.
8. The Claimant had lodged a Bundle of Documents with the Tribunal for the purposes of the Hearing.
9. Both parties made oral submissions.

Discussion and Decision

10. Mr Akhtar gave evidence to the effect that he had no involvement in the Tribunal procedure on behalf of the Respondent. The first he was aware was

being informed by the owner (Mr Ramzan) that a Tribunal claim had been lodged by the Claimant. He had no involvement with the lawyers instructed to act on the Respondent's behalf and had received no correspondence from the Tribunal regarding this matter. He did not open any mail received by the Respondent at the shop premises – another employee did this.

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11. Mr Akhtar further gave evidence to the effect that he had little technical knowledge regarding emails and he rarely opened emails that were sent to him. He denied having received correspondence from the Claimant's representatives despite the correspondence having been sent to his email address (copy of the PH Agenda sent to him on 28 May 2021).

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12. This evidence was challenged under cross examination when Mr Akhtar was referred to emails from the lawyers acting on the Respondent's behalf to him and from him to Mr Ramzan (Pages 55 to 56 of the Bundle).

13. The Tribunal did not accept Mr Akhtar's evidence that he had no knowledge (beyond being told about it by Mr Ramzan) or involvement in the Tribunal claim. He clearly had (under reference to Pages 55 – 56 of the Bundle which included an email from the Respondent's lawyer dated 9 June 2021 to him giving him advice on a draft response to ACAS and also the original email from ACAS to Imran Akhtar dated 8 June 2021).

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14. Mr Akhtar's evidence was evasive and contradictory. On the one hand he claimed never to have received emails and not to open emails sent to him yet the emails (pages 55 to 56) clearly show he has opened and forwarded the email from the lawyers to Mr Ramzan.

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15. The Tribunal did not accept Mr Akhtar's evidence – which was of limited assistance to the Respondent in any event. The Tribunal did not find his evidence credible or reliable.

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16. The Tribunal had no evidence from Mr Ramzan despite Mr Ramzan being the owner of the Respondent business and the author of the letter and email of 19 July 2021 and 6 August 2021 setting out the application for reconsideration. Accordingly the Tribunal had to consider the application from

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the documentation lodged in support of it (the letter and email of 19 July 2021 and 6 August 2021) and Mr Akhtar's evidence. The application for reconsideration confirmed that Mr Ramzan had received the Tribunal papers (which included the notice of Preliminary Hearing). The application stated that he had passed the papers to his lawyers. This statement contradicts the email from his lawyers to Mr Akhtar on 9 June 2021 and the email of 11 June 2021 from Aticus Law to the tribunal which stated that the Respondent did not have copies of the documentation, asked for copies and finished with the statement that they would be back in touch after they had been appointed to represent the Respondent (this correspondence was copied to Mr Akhtar). This was also contradicted by Mr Akhtar who stated that it was Mr Ramzan who had told him about the tribunal claim which clearly evidenced that the ET1 and Notice of Preliminary Hearing had been received.

17. The Tribunal had no evidence or documentation before it regarding the interactions with Aticus Law beyond the email exchange (Pages 55 to 56) and the email of 11 June 2021 from Aticus Law to the Tribunal.

18. The Tribunal had no explanation beyond it was apparently the fault of Aticus Law as to why no ET3 had been lodged, why the Respondent did not seek to have an ET3 lodged late and why the Respondent had not sought to defend or participate in the tribunal proceedings. The Respondent was clearly aware of the proceedings and the fact that a Preliminary Hearing had been fixed for 25 June 2021 (which was subsequently converted to a final hearing). The tribunal would have expected some evidence or documentation in support of the Respondent's position regarding the interaction with Aticus Law.

19. The Tribunal considered the terms of Rule 70 which provided that the Tribunal may reconsider any judgment where it is "*necessary in the interests of justice to do so*". It also considered the guidance in the case of **Outsight VB Limited v Brown UKEAT/0253/14** per Eady HHJ at paragraph 33: "*The interests of justice have thus long allowed for a broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also of the*

other party to the litigation and to the public interest requirement that the should, so far as possible, be finality of litigation”.

20. The Tribunal considered the competing interests of the parties, relative prejudice and the paucity of evidence in support of the Respondent’s explanation for not defending the Tribunal claim. The tribunal was not satisfied with and did not accept the explanation that it was Aticus Law’s failure to keep them informed about the tribunal proceedings that led to the proceedings being undefended. The Tribunal also took into account any prejudice to the parties. Clearly there would be prejudice to the Claimant (through no fault on her part) in terms of further cost, delay and expense in preparing for and attending a further hearing if the application were to be granted. The Claimant had already prepared for and participated in a final hearing. There would be potential prejudice to the Respondent if the application was not allowed in that if the Respondent had a defence then they would have been denied the opportunity to have presented it and would face the financial consequences of having to pay the sums awarded (although the value of the sum awarded was relatively low). If the Respondent’s solicitors have failed to deal with the matter on the Respondent’s behalf then there would be a potential remedy against them.
21. On balance, the Tribunal considered that it was not necessary in the interests of justice to reconsider the judgment in the whole circumstances of the case. It was in accordance with the overriding objective not to do so.

Employment Judge: Alan Strain
Date of Judgment: 07 February 2022
Entered in register: 11 February 2022
and copied to parties