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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104122/2020

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Reconsideration Application considered without a Hearing on 22 February 2022

Employment Judge: R Mackay

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Mr B Logue

Claimant

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DSG International

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the Respondent's Application for Reconsideration is allowed and that the Judgment issued following the Hearing on 26 February 2021 is revoked.

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REASONS

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1 This case previously came before the Employment Tribunal in circumstances where the Respondent had not defended the claim and did not participate in the Hearing. The Tribunal upheld the Claimant's claim for unfair dismissal and awarded the Claimant a basic award. No compensatory award was made.

2 By email of 24 December 2021, solicitors acting for the Respondent made an
application for reconsideration under Rule 71 of the Employment Tribunals
(Rules of Procedure) 2013 (“**ET Rules 2013**”).

3 In support of the application, the Tribunal was advised that the Respondent
5 name given on the claim form (DSG International) was incorrect. The
Claimant’s employer was said to be DSG Retail Ltd which changed its name
to Curry’s Group Ltd in September 2021.

4 It was submitted that the Respondent had no record of receiving the claim
form and first became aware of the Judgment on 22 December 2021 when a
10 High Court Enforcement Officer attended premises seeking to enforce the
Judgment.

5 Enquiries were made which resulted in no record of the claim being received
at any of the likely locations.

6 The Respondent’s solicitors advanced a stateable defence to the claim,
15 namely that the Claimant had been dismissed by reason of redundancy and
had received a redundancy payment thus meaning no basic award should
have been ordered.

7 Following receipt of the application, the Employment Tribunal ordered that a
copy of the claim form be sent to the Respondent’s solicitor, copied to the
20 Claimant.

8 Following receipt of that, the Respondent’s solicitors stated that the address
used on the claim form was incorrect. The address was the group registered
office until 15 October 2015. It had changed with effect from that date. They
produced an extract from Companies House evidencing the change of
25 registered office address.

9 The Tribunal was advised that post was diverted for a period of 48 months
from the change of address, being the maximum time permitted by the Royal
Mail.

10 The application for reconsideration was renewed.

11 The Tribunal invited the Claimant to provide any response to the application
and the subsequent correspondence. Both parties were invited to offer an
opinion on whether the application required a hearing.

5 12 The Claimant did not respond. The Respondent's solicitors indicated that they
considered a hearing was required.

13 Having considered the papers, the Employment Judge directed that having
considered the application, and the information provided in support, and
considering also the lack of any objection by the Claimant, the Employment
10 Judge did not consider a hearing to be necessary. Parties were invited to
make any further written representations before a decision was made.
Neither party did so.

Relevant Law

14 A Tribunal may reconsider any judgment where "it is necessary in the
15 interests of justice to do so": Rule 70 ET Rules 2013.

15 Under the previous version of the ET Rules (**ET Rules 2004**) there were five
grounds upon which a Tribunal could review a judgment. Two are relevant to
this case:

20 a. That a party did not receive notice of the proceedings leading to the
decision;

b. That the decision was made in the absence of a party.

16 In ***Outasight VB Ltd v Brown [2015] ICR D11 EAT***, HHJ Eady QC held that
the specific grounds are now subsumed within the "interest of justice" test. In
this case, HHJ Eady held that the "interest of justice" test provides Tribunals
25 with a broad discretion but that decision must be exercised judicially "which
means having regard not only to the interests of the party seeking the review
or reconsideration, but also to the interests of the other party to the litigation

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

17 A Tribunal dealing with a reconsideration application must seek to give effect
to the overriding objective of dealing with cases “fairly and justly” which
5 includes:

- a. Ensuring that the parties are on equal footing;
- b. Dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- c. voiding unnecessary formality and seeking flexibility in proceedings;
- 10 d. Avoiding delay, so far as compatible with proper consideration of the issues; and
- e. Saving expense.

Rule 2 ET Rules.

18 In *Williams v Ferrosan Ltd [2004] IRLR 607*, the EAT held that in light of
15 the introduction of the overriding objective the “interest of justice” ground should not be read “as if inserted into it are the words “exceptional circumstances” – there is therefore no “exceptionality hurdle”.

Decision

19 Having regard to the evidence submitted, the Tribunal was satisfied that the
20 Respondent met the burden of proof that it had not received the ET1 at the relevant time. It was sent to an address which has not been applicable to the Claimant’s employer for over six years.

20 Having not received the ET1, and the decision having been made in the absence of the Respondent, there is a clear prejudice in that the Respondent
25 has not been able to put forward its defence to the claim. The position

5 advanced on behalf of the Respondent does suggest that there are arguments on liability which, if successful, may affect the outcome. Whilst mindful of the benefit of the finality of litigation, with a view to ensuring that the issues can be addressed with the parties being on an equal footing, the Tribunal allowed the Respondent's application for reconsideration. In doing so, it noted the absence of any objection from the Claimant.

21 The case will accordingly proceed in the normal way with the Respondent being invited to respond to the claim and, should it do so, the case will be listed for a fresh Hearing.

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15 **Employment Judge: R MacKay**
Date of Judgment: 24 February 2022
Entered in register: 25 February 2022
and copied to parties

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