EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mrs S Glover	AND	Priory Group

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Bristol ON 8 April 2022

EMPLOYMENT JUDGE J Bax

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the Respondent's application for reconsideration is granted and the order striking out the response dated 8 February 2022 is revoked.

Order

1. The Tribunal shall send to the Respondent copies of the correspondence, orders, further particulars of claim and disability impact documentation forthwith.

2. The Respondent shall confirm whether or not it disputes that the Claimant was disabled at the material times with 14 days of receipt of the documentation referred to in paragraph 1 above.

3. The Respondent shall confirm what it says its correct name should be within 7 days of the receipt of the Order/Judgment.

4. The claim will be listed for a telephone case management preliminary hearing at which the issues in the claim will be identified and case management directions will be given.

REASONS

1. The Respondent has applied for a reconsideration of the judgment striking out the response dated 8 February 2022 which was sent to the parties the same day ("the Judgment"). The grounds are set out in its e-mail dated 24 March 2022.

2. On receipt of the application the Tribunal wrote to the parties on 30 March 2022, seeking any written response by the Claimant. It was also proposed that the application would be determined on the papers and any objection to that approach should be made on or before 6 April 2022. The Claimant had already provided written opposition to the application, of which the Judge had been unaware. The Claimant re-sent the written opposition to the application on 6 April 2022. Neither party objected to the application being dealt with on the papers. The hearing was therefore conducted on the papers.

Background

3. The claim was presented on 22 February 2021. The Claimant was required to provide further information, which was provided, and the claim was accepted. The claim was served on the Respondent on 7 June 2021 and a response was required by 5 July 2021.

4. The Respondent filed its response on 5 July 2021 from e-mail address StephanieWalsh@priorygroup.com . The e-mail address given for contact, in the ET3 was Stephanie.Walsh@Priorygroup.com.

5. The response was accepted on 7 September 2021 and the Respondent was notified of this on the Stephanie.Walsh e-mail address. In the letter the Claimant was required to provide a disability impact statement and supporting evidence to the Respondent. All subsequent correspondence to the Respondent from the Tribunal and the Claimant was sent to the Stephanie.Walsh e-mail address.

6. On 30 September 2021he parties were sent a notice of a telephone case management preliminary hearing on 5 January 2022.

7. The Claimant sent details of her discrimination claim and disability impact statement to the Respondent and Tribunal on 11 October 2021 and 1 November 2021 respectively.

8. On 15 November 2021, the Tribunal directed the Respondent to comment of the Claimant's disability evidence by 29 November 2021. No response was received, and it was chased by the Tribunal on 6 and 16 December 2021. No response was received, and it was directed that the issue would be discussed at the case management hearing.

9. The Respondent did not attend the case management hearing on 5 January 2022. The claim was listed for a 7 day final hearing in February 2023. The Respondent was ordered to, within 14 days of promulgation of the order, to notify the Claimant and Tribunal whether it continued to defend the claim and if so why it should not be struck out for failing to comply with the earlier directions or actively defend the claim.

10. No response was received from the Respondent and the Response to the claim was struck out on 8 February 2022 for failing to comply with directions on four occasions and not actively defending the claim.

11. On 10 March 2022, Knight's solicitors e-mailed the Tribunal informing it that they were now representing the Respondent and they understood that there was a case management order dated 5 January 2022 and asked for copies of all correspondence. On 22 March 2022, the Respondent's solicitor asked for all correspondence urgently and said that they had discovered a default judgment had been entered and that the Respondent had not received any correspondence or case management orders from the Tribunal. The same day the Respondent acknowledged receipt of the case management order and said that there had been an error in the e-mail address used and asked for copies of all paperwork so that it could apply to set aside the Judgment.

The application and opposition to it

12. The Respondent applied to set aside the Judgment on 24 March 2022. In the application it was set out that the Respondent had not received any correspondence from the Tribunal after the response had been filed. The previous week the solicitors had searched the Judgment database and found that the Response had been struck out. The Respondent had been unaware of any of the orders or that a hearing had been listed. They had discovered that correspondence had been sent to the Stephanie.Walsh e-mail address. The dot in the e-mail address in the ET3 was an administrative error and was unintentional and that Ms Walsh had been a temporary employee in July 2021 and left the Respondent's employment shortly after. Since the claim had been presented the Company (Priory Education Services Ltd) had demerged from the Priory Group and became

Aspris Children's Services Limited and was unaware of what had transpired with the case. The Respondent always intended to defend the claim and it had acted swiftly as soon as the existence of the Judgment and the nature of the error became apparent.

13. The Claimant opposed the application on the basis that the reconsideration application was made more than 14 days after the Judgment was sent to the parties. The Respondent had not notified the Tribunal that Ms Walsh had left its employment. The Respondent was aware there was a claim and did not follow up what was happening when it did not receive any communication. e-mails to the Stephanie.Walsh address were not returned. It was submitted that the circumstances were similar to the Employment Tribunal decision in Higgins and Beckinsale v Raja Care Homes Limited 3201665/2017 & 3201666/2017 and should be followed.

The law

14. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.

15. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.

16. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

17. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order".

18. More recent case law suggests that the "interests of justice" ground should not be construed as restrictively as it was prior to the introduction of the "overriding objective" (which is now set out in Rule 2). This requires the tribunal to give effect to the overriding objective to deal with cases fairly and justly. As confirmed in Williams v Ferrosan Ltd [2004] IRLR 607 EAT, it is no longer the case that the "interests of justice" ground was only appropriate in exceptional circumstances. However, in Newcastle Upon Tyne City Council v Marsden [2010] IRLR 743, the EAT confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.

Conclusions

19. The application was not made within the 14 day time limit, however the Respondent was unaware of the Judgment until the week before the application was made. In the circumstances it was in the interests of justice to extend time by virtue of rule 5.

20. The Claimant submits that the Employment Tribunal decision in Higgins and Beckinsale should be followed. The Employment Tribunal is not bound by other decisions of the Employment Tribunal. Each case must be determined on its own merits. In any event the circumstances were different in that no response had been received by the Tribunal. The response was accepted because it was considered that it was sufficiently arguable. It is noted that the Respondent is asserting that the Claimant was investigated and invited to a disciplinary hearing to answer to potentially serious allegations and the Claimant resigned before those proceedings had concluded. The response is reasonably arguable.

21. Although more care should have been taken by Ms Walsh in setting out her e-mail address in the ET3, I accepted that the Respondent did not receive correspondence from the Claimant and Tribunal, including that the response had been accepted. Ms Walsh left shortly after filing the response and it appears that no one else at the Respondent was aware of what was happening with the claim. If correspondence is not received, a party cannot be expected to respond to it. Some enquiry could have been made by Ms Walsh's successor as to the progress of the claim, if they were properly aware of it.

22. If the application is not granted the Respondent will be unable to defend the claim. It is notable that the claim is listed for a final hearing in February 2023 and if the Judgment is set aside there is no reason why that hearing cannot be maintained. If the order is granted the only real prejudice to the Clamant is the loss of a potential windfall as she would still need to prove

her claim. The Tribunal is required to deal with cases justly and fairly. The Respondent was unaware of the orders with which it had to comply in a case it said it wanted to defend in a response accepted by the Tribunal. In the circumstances it is in the interests of justice to allow the application and the order striking out the response is revoked.

Employment Judge Bax
Dated: 8 April 2022

Judgment sent to parties: 22 April 2022

FOR THE TRIBUNAL OFFICE