



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case nos: 4111177/2021 & 4111178/2021**

**Held in Chambers on 25 April 2022**

**Employment Judge Smith**

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**Miss C Finlay**

**First Claimant  
Not required to attend**

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**Mr F Callan**

**Second Claimant  
Not required to attend**

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**Applecrest Eco Limited**

**Respondent  
Not required to attend**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Respondent's application for reconsideration has no reasonable prospect of success and is refused.

**REASONS**

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1. The Respondent's founder Mr Ross Anderson emailed the Tribunal on 4 April 2022 applying for reconsideration of the judgment of 21 March 2022 in which I upheld all of the Claimants' claims. No grounds were

provided by Mr Anderson as to why the judgment should be reconsidered but this was understandable as Mr Anderson left the hearing part-way through and did not hear the oral judgment and reasons I gave that day. Also, the written reasons the Respondent had requested had not yet been provided.

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2. Written reasons were provided on 5 April 2022 and I gave the Respondent an opportunity to provide grounds for reconsideration now that Mr Anderson had had sight of the reasons. Mr Anderson then wrote to the Tribunal on 19 April 2022 with fuller grounds. I have read those and taken them into account in deciding the Respondent's application.

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3. The Claimants had not been copied into Mr Anderson's two emails, despite the requirement under **rule 92**. I therefore ensured that copies were sent to them and afforded them the opportunity to comment, if they wished. The Claimants did so on 20 April 2022 and I have taken into account their comments as well.

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4. The procedure for dealing with reconsideration applications is set out in **rule 72** of the **Employment Tribunal Rules 2013**. Under **rule 72(1)** I must first consider whether there is no reasonable prospect of the original decision being varied or revoked. If there is no such prospect the application shall be refused and the Tribunal shall inform the parties of the refusal.

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5. In my judgment the Respondent's application falls at this first hurdle and must be refused. The reasons for this are as follows.

6. Firstly, Mr Anderson takes issue with the fact that the sums the Respondent has been ordered to pay to the Claimants do not match the amounts set out in payslips he sent to the Tribunal. The Tribunal only heard evidence from the Claimants and as part of that evidence I was directed to their spreadsheet of hours worked. I accepted that evidence as accurate and made findings in fact accordingly.

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7. The Respondent called no witnesses to give evidence at the hearing, and Mr Anderson himself left the hearing at 11.15am despite it having been listed for a full day and despite the parties having ample notice of that fact. If the Respondent wished to put an alternative to the Claimants'

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contentions it was incumbent upon it to call a witness to do so (by reference to those payslips if necessary) and to challenge the Claimants' evidence through questioning. The Respondent elected to do neither.

8. In these circumstances the Tribunal was fully entitled to accept the evidence presented by the Claimants, and there is simply no reasonable prospect of the judgment being varied or revoked on this first ground.
9. Secondly, Mr Anderson takes issue with the judgment awarding compensation of two weeks' pay to each of the Claimants under **section 38** of the **Employment Act 2002**, it having become apparent during the hearing that neither Claimant had been issued with a statement of employment particulars as required by **section 1** of the **Employment Rights Act 1996**.
10. Mr Anderson complains that "*We did not provide contacts of employment as we were in the middle of the pandemic and were unsure how long we were going to be able to trade. We had been open and closed a number times that year. An award of compensation to these two is a kick in the teeth and a reward for their vile behaviour.*" **Section 38(5)** of the **Employment Act 2002** provides for an "exceptional circumstances" defence which, if made out, may result in no award of compensation being made for a failure to provide a statement of employment particulars.
11. Unfortunately for the Respondent, at the hearing it did not run the argument Mr Anderson now wishes to run. Had Mr Anderson remained in attendance at the hearing he would have been given a full opportunity to deal with the point, to call evidence in support of the "exceptional circumstances" defence and to put his case to the Claimants in evidence. He elected not to remain and the Tribunal decided to proceed in the absence of the Respondent under **rule 47**, with the Respondent's express consent. Again, and in relation to this second ground, there is no reasonable prospect of the judgment being varied or revoked simply because a party now wishes to run an argument it could have run at the hearing itself.
12. Thirdly, and finally, Mr Anderson states that "*I note that the court has not even bothered to address our complaints against these two. Trashing their*

*accommodation and leaving without any notice or regard to their co-workers or our business.”*

13. A failure to deal with a relevant point might, in principle, be grounds for reconsideration. However, in this instance it is an entirely baseless suggestion. Despite the fact that the Respondent called no evidence to substantiate its contentions, paragraph 4 of the written reasons noted the Respondent’s defences to the Claimants’ claims of unauthorised deductions from wages, and paragraph 15 disposed fully of those defences. In relation to this third and final ground for reconsideration, where a point has in fact been fully determined there is no reasonable prospect of the judgment being varied or revoked on the basis that it has not.
14. It follows that the Respondent’s reconsideration application has no reasonable prospects of success and is refused under **rule 72(1)**. There is no need for me to take any further action under **rule 72** in relation to it.

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**Employment Judge:**  
**Date of Judgment:**  
**Date sent to parties:**

**P Smith**  
**26 April 2022**  
**27 April 2022**