



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Andersson  
**Respondent:** Norwood Electrical (UK) Ltd

**UPON APPLICATION** made by letter dated 8<sup>th</sup> June 2022 to reconsider the judgment dated 27<sup>th</sup> May 2022 under rule 71 of the Employment Tribunal Rules of Procedure 2013, and without a hearing,

## JUDGMENT

1. The reconsideration application is granted and the judgment entered on 27<sup>th</sup> May 2022 and sent to the parties on 8<sup>th</sup> June 2022 set aside.
2. A full merits hearing will now be listed to determine the claim.
3. Case management orders are made as set out in a separate document.

## REASONS

### Background

1. The Claimant was employed by the Respondent for one week, from the 22<sup>nd</sup> November 2021 to 26<sup>th</sup> November 2021 as a PAT Tester.
2. By an ET1 Claim form submitted on 31<sup>st</sup> January 2022, the Claimant brings a claim for an unlawful deduction from wages and a breach of contract claim in relation to unpaid expenses.
3. The Respondent resists the claim stating that the Claimant misled the Respondent in the application process and was unable to perform the role satisfactorily. The Respondent also asserts that the Claimant's actions have caused them financial loss, although no counterclaim is advanced.
4. The case had been listed for a two-hour hearing on 27<sup>th</sup> May 2022, at the Tribunal Hearing Centre in Nottingham. Neither party were in attendance, nor had I had any indication that they had contacted the Tribunal on the day of the hearing to explain their absence. Accordingly, I issued a judgment dismissing the claims which was subsequently sent to the parties on 8<sup>th</sup> June 2022.

5. On the 8th June 2022, the Claimant wrote to the Tribunal requesting a reconsideration, stating:

*'I was not advised that the tribunal was to be held on 27th May 2022 and I believe the respondent was not advised either, which is why both of us did not attend on the day.'*

6. The Claimant's application was sent to the Respondent who asserted that they had received the notice and had telephoned the Tribunal on the day before the hearing to see if it was still going ahead.

### The law

7. Rule 70 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is in the interests of justice to do so. This provides a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances, having regard not only to the interests of the party seeking the reconsideration, but also the interests of all other parties to the litigation.
8. In determining the question of a reconsideration, the Tribunal must have regard to the overriding objective, to deal with cases fairly and justly. This obligation is set out in Rule 2 of the 2013 Regulations and includes:
  - (a) ensuring that the parties are on an equal footing;
  - (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
  - (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
  - (d) avoiding delay, so far as compatible with proper consideration of the issues; and
  - (e) saving expense.
9. The Employment Appeal Tribunal has given guidance as to the nature of a request for reconsideration:
  - (a) Reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to re-argue matters in a different way or adopting points previously omitted.
  - (b) There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule.
  - (c) It is not a means by which to have a second bite at the cherry, or is it intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.
  - (d) Tribunals have a wide discretion whether or not to order reconsideration. Where a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.

Conclusions

- 10. The combined Notice of a Claim and Notice of Hearing was sent to the Claimant and Respondent on 9<sup>th</sup> February 2022. It was clearly received by the Respondent as the ET3 Response Form was completed and submitted to the Tribunal on 8<sup>th</sup> March 2022. It was sent to the address provided by the Claimant on his ET1 Claim Form.
- 11. I am mindful of the fact that if the Claimant did not receive the Notice of Hearing, he was unable to advance his case in the Tribunal. This is not a matter of him attempting to relitigate, or to have a second bite at the cherry. He was unable to advance his evidence and his matter was therefore not fully and properly argued. He was immediate in his communication with the Tribunal, explaining his position and requesting a reconsideration on the day that the judgment was promulgated.
- 12. This must be viewed in the context of the Respondent’s conduct. The Respondent clearly admits to receiving the Notice of Hearing but did not comply with the directions set out therein. The Respondent simply chose not to attend the hearing, seemingly content to rely on the information presented in their ET3 form.
- 13. Reconsiderations are a very limited exception to the necessity of the finality of litigation and the public interest that that serves, and I am content that it is in the interests of justice that this matter should proceed to a full merits hearing to determine the claims on hearing the evidence of both parties.

Employment Judge Heathcote  
Date: 15<sup>th</sup> August 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE