



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Machin  
**First Respondent:** Strive 4 Sports Limited  
**Second Respondent:** Mr Luke Jenkinson  
**Heard at:** Midlands (East) : in Chambers  
**Before:** Employment Judge Broughton

## JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

The Second Respondent's application dated 13 July and 24 August 2022 for a reconsideration of the Tribunal's Judgment 12 May and 28 June 2022, is refused on the grounds that it has no reasonable prospect of success.

## REASONS

### The Application

1. The Respondents to the claim are Strive 4 Sports Limited (R1) and Mr Luke Jenkinson (R2).
2. The Tribunal received an application for reconsideration of a judgment following a hearing on 12 May and 28 June 2022 and which had been sent to the parties on 30 June 2022, from Mr Jenkinson (R2) on 13 July 2022 via email from [lukejjenkinson@hotmail.co.uk](mailto:lukejjenkinson@hotmail.co.uk). The application simply stated as follows:  
  
*"I have not received any correspondence before this email whether that be via email or in writing in the post since 2021. Therefore I believe that the matter in hand needs to be reconsidered or I would wish to appeal it.  
Due to not receiving any information I have been unable to represent myself or provide any evidence "*
3. Given the wording of the application (that R2 had not received information and thus had not been able to represent "myself"), the application is treated as an application brought on behalf of R2 only.

4. The application was not made in accordance with rule 71 in that it was not copied to the Claimant however, it was submitted within the time limit prescribed by rule 71 (within 14 days from the date on which the judgment was sent to the parties). A copy was sent by the Tribunal to the Claimant. No request has been made for written reasons of the judgment which was delivered orally, either by R2 or indeed by R1.
5. Given the brevity of the application, I sought some clarity on the application from R2 before deciding under rule 72(1) whether the application has any reasonable prospect of success.
6. A letter was prepared but unfortunately was not sent out to the parties, until the 11 August 2022 requesting information from R2, namely whether he was alleging in his application that he had not received an email on the 11 February 2022 providing notice of the hearing, whether he was alleging that he had not received an email or voicemail message from Ms Vohra, a tribunal clerk on the day of the hearing on 12 May 2022 and in each case an explanation. R2 was also asked to confirm what he was asserting that he had not received communications from the Claimant with regards to case management. Mr Jenkinson replied on 24 August 2022. His replies were brief and are addressed in the reasons below but in essence he denied receipt of any of those communications or messages.
7. The Claimant was not invited to submit representations but did so on the 25 August 2022, however in dealing with the issue of whether the application has reasonable prospects under rule 72(1), those have not been taken into consideration at this stage

### **Communication with R1 and R2**

8. The relevant background is that R1 filed a response with the Tribunal on 20 January 2020 providing a contact name of Mr Luke Jenkinson (R2) and contact email address of: [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com). The response was rejected as it was submitted out of time and without an application for an extension of time. No application was ever made for an extension of time and therefore no valid response was presented to the claim by R1.
9. An application was made to add Mr Jenkinson as a second respondent. The Tribunal was sent an email on the 29 November 2020 timed at 20:51, from the Claimant to R1 and R2 at email address: [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com). This was an application opposing a decision by the Tribunal to release R2 as a respondent to the claim.
10. R2 personally replied to that application promptly on 29 November 2020 timed at 22:42 from email address: [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) (The email address given in the response filed on behalf of R1 as its contact email address). R2 objected to the application to retain him as a second respondent to the claim.

11. The decision to release R2 was reconsidered and he remained a respondent and was served with a copy of the claim by post and email R2 filed his brief response on 28 June 2021 and gave his address for service as: [lukejjenkinson@hotmail.co.uk](mailto:lukejjenkinson@hotmail.co.uk)
12. A preliminary hearing took place on 7 February 2022 and notice of it was sent out to the parties on the 1 September 2021 and sent to [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com)
13. Mr Jenkinson did not attend that hearing. There was no other attendance on behalf of R1 or R2.
14. The record of that hearing confirmed that a hearing would take place on 12 May 2022 and that R1 would only be able to participate to the extent allowed by the Employment Judge on the day. R2 having filed a response which had been accepted, would be able to participate. The hearing was to determine liability and remedy as against R2 and R1.
15. Mr Jenkinson denies having received the record of the preliminary hearing confirming the date of the final hearing which was sent out on 11 February 2022 to [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com). He asserts in this application that he has not had access to the email account [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) since September 2021. He does not explain why as the Managing Director of R1 and the named contact on the draft response form which had been filed (but rejected), he did not have access.
16. Mr Jenkinson does not assert in his application that at any point the Tribunal were informed by R1 that its address for service was no longer [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) or that there was another contact name. There is nothing on the Tribunal file.
17. Mr Jenkinson has provided what he says is a screenshot of emails received which does not include the email of 11 February 2022 . Email entries can course be easily deleted.
18. There is no record on the Tribunal file of emails sent to [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) coming back as undeliverable until one was set by the Tribunal to [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) on 11 August 2022 timed at 08:18 – this one came back with the messages; “ *Your message to [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) couldn't be delivered*”. The previous emails did not come back as undelivered with this message.
19. On 10 May 2022, the Claimant complained by email sent to [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) that the Respondents were ignoring tribunal orders and not responding to requests to exchange witness statements. There was no reply from R1 or R2
20. The Claimant filed an application for costs on 11 May 2022, they sent a copy to the Respondents at: [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com)

21. R1 and R2 did not attend the hearing on 12 May 2022.
22. Ms Vohra a tribunal clerk at my request, on the day of the hearing sent an email on 12 May 2022 (timed at 11:16). It was sent to: [lukejjenkinson@hotmail.co.uk](mailto:lukejjenkinson@hotmail.co.uk): stating that the hearing for the above case was taking place at the Nottingham Tribunal that day at 11am and asking Mr Jenkinson to confirm whether he would be attending. There was no reply to that email and it did not come back as undeliverable.
23. Mr Jenkinson does not allege in his application under rule 71, that he did not have access to his Hotmail address. He has sent a screen shot of emails received. He alleges he has also checked his junk folder but believes Microsoft typically delete emails from the junk folder within 10 days.
24. Ms Vohra however also contacted Mr Jenkinson by telephone on 12 May 2022 to inform him the hearing was taking place and left a message. He denies also receiving that message as well but fails to explain how that could have happened and does not dispute that the mobile telephone number he was contacted on, was and remains his personal number.
25. The evidence was heard on the 12 May 2022 and judgment was reserved. Judgment was delivered orally on 28 June 2022.
26. Notice of the hearing on 28 June 2022 to deliver the judgment, was sent to [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com)
27. The judgment was sent out by email to [lukejjenkinson@hotmail.co.uk](mailto:lukejjenkinson@hotmail.co.uk): and [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com)
28. Mr Jenkinson used the email address [lukejjenkinson@hotmail.co.uk](mailto:lukejjenkinson@hotmail.co.uk): to complain that he had not received any correspondence before he received the judgment.
29. Mr Jenkinson offers no explanation for allegedly not receiving the voicemail message from the Tribunal on 12 May 2022. Indeed he has provided a screenshot of calls which clearly shows that he was using this telephone number and that he was receiving voicemails on 11 May 2022 and after the 12 May 2022.

### **The Legal Principles**

30. The relevant rules are as follows pursuant to The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 are as follows:

#### ***Principles***

*70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.*

### **Application**

*71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*

*72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application”.*

31. The Tribunal in exercising the power under Rules must do so in accordance with the overriding objective.
32. In **Ministry of Justice v Burton and another [2016] ICR 1128, Elias LJ** approved the comments of Underhill J in *Newcastle upon Tyne City Council v Marsden [2010] ICR 743*, that the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored.
33. The courts have emphasised the importance of finality (**Flint v Eastern Electricity Board [1975] ICR 395**) which militates against the discretion being exercised too readily.
34. In **Liddington v Gether NHS Foundation Trust UKEAT/0002/16** Simler P held: “...a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. 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. They are not a means by which to have a second bite at the cherry, nor are they 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. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited”

35. An identifiable administrative error, including as alleged by R2 in this case, a party not receiving the notice of a hearing may provide a legitimate basis for reconsideration under rule 70.

## **Decision**

36. I have considered the grounds of the application and the prospects of R2 establishing that he did not receive notice of the hearing, and whether there are in turn reasonable prospects of the original decision being varied or revoked based on his application.
37. I have taken into account the rules for service of documents pursuant to rules 85 to 91 which are as follows:

### ***Delivery to the Tribunal***

**85.**—(1) *Subject to paragraph (2), documents may be delivered to the Tribunal—*

*(a) by post;*

*(b) by direct delivery to the appropriate tribunal office (including delivery by a courier or messenger service); or*

*(c) by electronic communication.*

*(2) A claim form may only be delivered in accordance with the practice direction made under regulation 11 which supplements rule 8.*

*(3) The Tribunal shall notify the parties following the presentation of the claim of the address of the tribunal office dealing with the case (including any fax or email or other electronic address) and all documents shall be delivered to either the postal or the electronic address so notified. The Tribunal may from time to time notify the parties of any change of address, or that a particular form of communication should or should not be used, and any documents shall be delivered in accordance with that notification.*

### ***Delivery to parties***

**86.**—(1) *Documents may be delivered to a party (whether by the Tribunal or by another party)—*

*(a) by post;*

*(b) by direct delivery to that party's address (including delivery by a courier or messenger service);*

*(c) by electronic communication; or*

*(d) by being handed personally to that party, if an individual and if no representative has been named in the claim form or response; or to any individual representative named in the claim form or response; or, on the occasion of a hearing, to any person identified by the party as representing that party at that hearing.*

*(2) For the purposes of sub-paragraphs (a) to (c) of paragraph (1), the document shall be delivered to the address given in the claim form or response (which shall be the address of the party's representative, if one is named) or to a different address as notified in writing by the party in question.*

*(3) If a party has given both a postal address and one or more electronic addresses, any of them may be used unless the party has indicated in writing that a particular address should or should not be used.*

### ***Delivery to non-parties***

**87.** *Subject to the special cases which are the subject of rule 88, documents shall be sent to non-parties at any address for service which they may have notified and otherwise at any known address or place of business in the United Kingdom or, if the*

*party is a corporate body, at its registered or principal office in the United Kingdom or, if permitted by the President, at an address outside the United Kingdom.*

**Date of delivery**

**90.** *Where a document has been delivered in accordance with rule 85 or 86, it shall, unless the contrary is proved, be taken to have been received by the addressee—*

*(a) if sent by post, on the day on which it would be delivered in the ordinary course of post;*

*(b) if sent by means of electronic communication, on the day of transmission;*

*(c) if delivered directly or personally, on the day of delivery.*

**Irregular service**

**91.** *A Tribunal may treat any document as delivered to a person, notwithstanding any non-compliance with rules 86 to 88, if satisfied that the document in question, or its substance, has in fact come to the attention of that person.*

**Conclusion**

38. The email address provided by R2 was not always used by the Claimant's solicitors or the Tribunal staff for service of documents, instead documents were often sent only to the [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) (perhaps because R2 had himself made contact with the Tribunal using this email address on 29 November 2020).
39. Rule 90 provides that where a document has been sent by email, it will be presumed to have been received on the day of transmission unless the contrary is proven. Furthermore, the inclusion of rule 91, which deals with irregular service and states that a tribunal may treat any document as delivered notwithstanding non-compliance with the provisions for service in rules 86-88 provided that it is satisfied that the document (or its substance) has in fact come to the attention of the party.
40. There has been a full liability and remedy hearing. That hearing took a whole day to consider the evidence.
41. If it were the case that R2 had no access to the [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) after September 2021, Mr Jenkinson on behalf of R1 puts forward no explanation for failing to inform the Tribunal on behalf of R1, of an alternative address. Further, the emails sent to [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) did not come back as undeliverable until one was sent by the Tribunal on 11 August 2022, after the written judgment had been sent out. Further, Mr Jenkinson has not provided any credible explanation in his application for failing to receive a telephone message from Ms Vohra on what he does not dispute is his working contact number on the day of the hearing when he was, on his own case, receiving other voicemails around that same time. On the face of it, his explanation for not receiving the email on 12 May 2022, is also not credible, in that it was sent to the same email Hotmail address he used to make the reconsideration application and he does not dispute receiving a copy of the judgment emailed from the Tribunal to this Hotmail address, but alleges that the 12 May 2022 email from the Tribunal 'may' have gone into his spam/junk folder. He does not seek to explain why

one of the emails would be directed to his spam/junk folder and another was not.

42. Under rule 70, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so' and the tribunal must seek to give effect to the overriding objective to deal with cases 'fairly and justly' under rule 2.
43. The grounds of the application as presented, namely that R2 was not aware of the hearing taking place on 12 May 2022, I find has no reasonable prospect of success. R2 was the Managing Director of R1 and considering Rule 91, emails sent by the Tribunal to this email address, and as is clear from the Tribunal file, they were not coming back from [ljenkinson@premier-education.com](mailto:ljenkinson@premier-education.com) as undeliverable at any time up to the judgment being sent out, only after that date.
44. Further, R2 was contacted by the Tribunal on the day of the hearing on the contact details he had supplied for the claim brought against him personally, both on the mobile and email addresses provided and based on his explanation for not having received either messages, he has no reasonable prospects of establishing that he did not receive them. He does not allege any malfunction with his email account or mobile phone on 12 May 2022.
45. In any event, Mr Jenkinson was responsible for ensuring that he could be contacted on the contact details he supplied to the Tribunal.
46. The Claimant prepared for and attended a full day at the Tribunal where his evidence was heard in full. Judgment was delivered on 28 June 2022. In the intervening period between 12 May 2022 and the 28 June 2022, Mr Jenkinson did not respond to the voicemail message left for him or the email sent to his Hotmail account, contact details he had provided to the Tribunal and which he continues to use to communicate with the Tribunal .
47. I consider that there is no reasonable prospect of Mr Jenkinson establishing that he had not received the communications from the Tribunal before receiving the Judgment (taking into consideration the application of the rules of service including rule 91).
48. I consider that there is no reasonable prospect therefore of the original decision being varied or revoked.
49. The application for reconsideration of the judgement made against R2 is therefore refused under rule 71(1).



Employment Judge Broughton  
13 September 2022

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