



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Mr Derek Mccoy

AND

**Respondent**

First Greater Western Limited

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD AT** Bristol

**ON**

26 February 2021

**EMPLOYMENT JUDGE** J Bax

## **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

The judgment of the Tribunal is that the Claimant's application for reconsideration of the Judgment on the application for a reconsideration dated 2 February 2021 is dismissed.

## **REASONS**

1. The Claimant applied for reconsideration of the letter from the Tribunal dated 7 October 2020, under which the Claimant was notified of the Tribunal's decision that the claim had been rejected. The name of the Respondent on the Early Conciliation Certificate was 'First Group plc. GWR'. The name of the Respondent on the claim form was 'First Greater Western Limited'. Both entities had the same address. The Claimant was represented by a firm of solicitors at the time of presentation of the claim and when the application for a reconsideration was made. That application was considered on 2 February 2021 and the application the decision to

reject the claim was reconsidered and the claim was accepted with effect from 16 October 2016. The Claimant is referred to that earlier Judgment, which is appended hereto, and it should be read in conjunction with this Judgment

2. On 25 February 2021, the Claimant applied for a reconsideration of the Judgment reconsidering the original rejection. The Claimant set out in its application that the original application had been on the basis that the decision to reject was wrong in that it ran contrary to the discretion given in rule 12 (2A) of the Employment Tribunal Rules of procedure which provided *“The claim or part of it, shall be rejected if the Judge considers that the claim. Or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made [an] error in relation to a name or address and it would not be in the interests of justice to reject the claim.”* It was emphasised that the application was made on the basis that the decision to reject was wrong. It is submitted that the date the original application was made was not the date of rectification because rectification of the certificate was not possible.
3. 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. Under Rule 70 the Tribunal may reconsider any Judgment on its own initiative.
4. 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.
5. S. 12(2A) of the Employment Tribunal rules of procedure was amended with effect from 8 October 2020 and originally provided, *“The claim or part of it, shall be rejected if the Judge considers that the claim. Or part of it, is of a kind described in sub-paragraph (e) or (f) of paragraph (1) unless the Judge considers that the claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim.”* (my emphasis).
6. The decision to reject the claim was made on 2 October 2020, but it was not communicated to the Claimant until 7 October 2020. The decision was made under the pre-8 October 2020 formulation of the rules. The name of the potential Respondent on the ACAS certificate was FirstGroup plc and the name of the Respondent on the claim form was First Greater Western Limited. They are both are distinct corporate legal entities. Conciliation had therefore taken place with a different legal entity to that named on the claim form. This was not a minor error in the name but an error naming entirely

- different entities. It was relevant that the Claimant was represented by a firm of solicitors when the claim was presented. At the time of the original decision to reject the claim, the pre- 8 October 2020 version of the rule was applied, and the decision was not wrong.
7. When the application to reconsider the rejection was made, the rules had changed. There was not an explanation in the claim form that an error in the identity of the name of the Respondent had occurred, and the first time it was apparent was in the application. It would be a fiction to apply the reasoning under the new formulation, to a decision taken under the previous formulation of the rules and say that the claim should be accepted as of the date of presentation. It was not until the Claimant provided his explanation and the current formulation of the rules was applied that the claim could be accepted.
  8. In the circumstances, the original defect was more than minor and, under the rules prevailing at the time the claim was presented, it had to be rejected. After the change in the rules, the test was less strict, and the claim was accepted from the date of the application and explanation of the error. It was in the interests of justice to reconsider the decision, however I was not persuaded that the decision was wrong and the decision on 2 February 2021 is confirmed.
  9. The Claimant's application for a reconsideration and to vary the date of acceptance of the claim is refused.

Employment Judge J Bax  
Date: 26 February 2021

Judgment sent to the Parties: 10 March 2021

FOR THE TRIBUNAL OFFICE