EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr Robert Hiles	AND	Alliance Parking UK Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD BY VIDEO (VHS) **ON** 17 November 2022

EMPLOYMENT JUDGE N J Roper

Representation:
For the claimant: In Person
For the respondent: Mr K McManus, Director

JUDGMENT ON APPLICATION TO RECONSIDER RULE 21 JUDGMENT

The judgment of the tribunal is that the respondent's application for reconsideration is allowed. The judgment entered under Rule 21 is hereby revoked, and the claimant's claim is permitted to proceed to a hearing.

REASONS

1. The respondent has sought a reconsideration of the judgment entered under Rule 21 dated 1 August 2022 which was sent to the parties on 8 August 2022 ("the Judgment"), and it has made an application for an extension of time to serve its response. The grounds are set out in its e-mail letter dated 15 August 2022 which was received at the tribunal office on that day.
2. This has been a remote hearing on the papers which has been both requested and consented to by the parties. The form of remote hearing was by Video Hearing Service (VHS).
3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2015 ("the Rules"). Under Rule 21(2) judgment can be issued

where no response has been presented within the time limit in Rule 16, or a response has been rejected and no application for reconsideration is outstanding, or the respondent has stated that no part of the claim is contested.

4. 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. The application was therefore received within the relevant time limit.
5. 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.
6. The grounds relied upon by the respondent are simple and they are these, namely that the proceedings were served on an incorrect address. The correct address of the respondent is Unit 1A Newquay Road, Saint Columb, Saint Columb Road, Clare County, Truro, TR9 6PZ. Unfortunately, the claimant's originating application gave the correct address save for putting Unit 1C (instead of Unit 1A). The proceedings were therefore served on a neighbour of the respondent and not on the respondent. The respondent only became aware of the proceedings when the neighbour handed in the tribunal documents to the respondent, which was immediately after the Judgment had been entered under Rule 21
7. Under the previous Rules of Procedure (relating to the review of what were called Default Judgments) the EAT gave guidance on the factors which tribunals should take into account when deciding whether to review a default judgment in Moroak t/a Blake Envelopes v Cromie [2005] IRLR 535. The EAT held that the test that a tribunal should apply when considering the exercise of its discretion on a review of a default judgment is what is just and equitable. In doing so, the EAT referred to the principles outlined in Kwik Save Stores Ltd v Swain and others [1997] ICR 49.
8. In the Kwik Save decision, the EAT held that "… the process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice". The case established that an Employment Judge should always consider the following three factors. First, the explanation supporting an application for an extension of time. The more serious the delay, the more important it is that the Employment Judge is satisfied that the explanation is honest and satisfactory. Secondly, the merits of the defence. Justice will often favour an extension being granted where the defence is shown to have some merit. Thirdly, the balance of prejudice. If the employer's request for an extension of time was refused, would it suffer greater prejudice than the employee would if the request was granted?
9. This guidance in Kwik Save was approved by reference to the subsequent 2013 Rules in Office Equipment Systems Ltd v Hughes UKEAT 0183/16/ JOJ.
10. I have also considered the case of Pendragon Plc (trading as C D Bramall Bradford) v Copus [2005] ICR 1671 EAT which confirms that in conducting

a reconsideration of a Rule 21 Judgment (formerly a review of a default judgment under the previous Rule 33) an Employment Judge has to take account of all relevant factors, including the explanation or lack of explanation for the delay and the merits of the defence, weighing and balancing the possible prejudice to each party, and to reach a conclusion that was objectively justified on the grounds of reason and justice.

11. Applying these principles in this case, I find that the original claim was incorrectly served. As soon as the respondent was aware of the tribunal proceedings it made an immediate application for reconsideration and shortly thereafter accompanied it with its proposed response to this claim which is clearly arguable and has some merit. The balance of prejudice clearly favours allowing the respondent's application. Although it will deprive the claimant of a windfall judgment on his claim, the greater prejudice lies in continuing to disallow the respondent from pursuing its arguable defence to this claim in circumstances where these proceedings were incorrectly served in the first place.
12. Accordingly, I allow the application for reconsideration pursuant to Rule 70 because it is in the interests of justice to do so, and the Judgment is hereby revoked. I also allow the application for an extension of time and the respondent's response is accepted. The matter will now proceed to a hearing to determine the claimant's claims as earlier directed.

Employment Judge N J Roper
Date: 17 November 2022

Judgment sent to Parties: 24 November 2022

FOR THE TRIBUNAL OFFICE