



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs. S.L.T. Sun Chung  
**Respondent:** Consultancy Solutions 22 Ltd. (formerly Wok to Go Ltd.)  
**Heard on:** Video (CVP) **On:** 1 November 2022  
**Before:** Employment Judge S Evans (sitting alone)

## Representation

**Claimant:** in person  
**Respondent:** Mr. W. Mohammed  
(husband of Ms. S. McCarthy, director of Respondent)  
**Interpreter:** Mrs. Gillian Lam

# RESERVED JUDGMENT

1. The respondent's application for reconsideration of the judgment entered on 18 February 2022 is granted.
2. The judgment entered on 18th February 2022 and sent to the parties on 21<sup>st</sup> February 2022 is revoked.
3. The claim will be re-listed for a full merits hearing in accordance with the case management orders set out in a separate document.

# REASONS

## Background

1. The claimant's ET1 was issued on 21<sup>st</sup> June 2021. It named the respondent as "Wok to Go".
2. The claimant's ET1 was sent to Wok to Go at 110 Caerphilly Road, Cardiff CF14 4QG on 23<sup>rd</sup> July 2021. A notice of hearing accompanied service of the ET1.
3. A final merits hearing in this case was heard, by video platform (CVP) on 15<sup>th</sup> February 2022. The claimant was in attendance and gave oral

evidence. The respondent, then named as Wok to Go Ltd., had not entered a response to the claim, did not attend the hearing and was not represented.

4. After hearing evidence from the claimant, the claims of unfair dismissal, entitlement to a statutory redundancy payment, unlawful deduction from wages, breach of contract and entitlement to pay for accrued and untaken annual leave were held to be well-founded and succeeded.
5. Judgment was entered on 18<sup>th</sup> February 2022 and sent to the parties on 21<sup>st</sup> February 2022. The judgment was sent to Wok to Go Ltd. at 110 Caerphilly Road, Cardiff CF14 4QG.
6. On 16<sup>th</sup> May 2022, Ms. S. McCarthy, on behalf of the respondent, sent an email to ET Penalties stating that it was unaware of the tribunal proceedings and requesting information as to how the judgment could be set aside.
7. On 29<sup>th</sup> May 2022, Ms. McCarthy sent an email to Wales ET requesting a reconsideration of the judgment.

### **Preliminary Issue**

8. A request for reconsideration, under Rule 71 of Schedule 1 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the Regulations”), must be made within 14 days of the date on which the written record of the original decision was sent to the parties and shall set out why reconsideration of the original decision is necessary.
9. The request for reconsideration in this case was not made within the 14 day period as required under rule 71.
10. No issue of time was raised by the claimant.
11. Under Rule 5 of the Regulations, the Tribunal may of its own initiative extend or shorten any time limit specified in these rules, whether or not that time limit has expired.
12. Having regard to the overriding objective and taking into account the explanation put forward by the respondent for the delay, it is in the interests of justice to extend the time limit to a period of 14 days of the Respondent becoming aware of the judgement. The Respondent became aware of the judgment on 16<sup>th</sup> May 2022 and made its request on 29<sup>th</sup> May 2022. It was therefore made within the extended time limit and can proceed.

### **The Reconsideration Hearing**

13. The hearing was held remotely by CVP. The technology worked satisfactorily throughout the hearing and both parties confirmed they had been able to take a full part in the hearing.
14. The hearing was listed as a reconsideration hearing but the parties had also been put on notice that, if the judgment was not confirmed, the

Tribunal would move to the full merits hearing the same day. This was not possible due to the time taken to address the issues raised in the reconsideration hearing and judgment on the reconsideration issue was reserved.

15. The Interpreter's oath was taken at the outset of proceedings and the claimant and Interpreter confirmed they could each understand the other.
16. Contrary to the directions issued by the Tribunal, there was no agreed bundle of documents but each party produced documents before the hearing. The parties were directed to refer specifically to any documents to which the Tribunal should have regard in reaching its decision.
17. Oral evidence was taken from the claimant and from Mr. Mohammed for the respondent. Oral submissions were made by both parties.
18. The Tribunal took account of all the evidence to which it was directed in reaching its decision. The Tribunal also carefully considered the oral submissions made by the parties.

### **The Issue**

19. The issue for determination was whether it is in the interests of justice that the judgment entered on 18<sup>th</sup> February 2022 should be reconsidered and either confirmed, varied or revoked.
20. The position of the respondent is that it was not the claimant's employer and that she was employed by a different company, initially called Spicy Noodles Ltd. and then changed to Business Trads GB Ltd. The respondent says that this means the judgment should be revoked so that the respondent can defend the claim and so that a second respondent can be joined to the proceedings.
21. The claimant disputes the respondent's submissions. Her case is that the employer was Wok to Go Ltd and that the original judgment should be confirmed.

### **Findings of Fact**

22. The respondent's registered office was at 110 Caerphilly Road, Cardiff CF14 4QG until 7<sup>th</sup> October 2021 when it was moved to 2 Import Building, Ground Floor, 2 Clove Crescent London E14 2BE.
23. The respondent surrendered the lease it held on 110 Caerphilly Road Cardiff CF14 4QG in March 2021. A new tenant took over the property. It was agreed that any mail received for the respondent at 110 Caerphilly Road would be forwarded to Mrs. S. McCarthy, a director of the respondent company.
24. The evidence of Mr. Mohammed, which is accepted by the Tribunal, is that no correspondence relating to the Tribunal proceedings was forwarded to the respondent by the new lessee of 110 Caerphilly Road, Cardiff.

25. The ET1 and Notice of Hearing were sent by post to 110 Caerphilly Road Cardiff CF14 4QG on 21 June 2021.
26. The judgment of the Tribunal dated 18<sup>th</sup> February 2022 was sent by post to 110 Caerphilly Road, Cardiff CF14 4QG on 21<sup>st</sup> February 2022.
27. The Tribunal file shows that 110 Caerphilly Road was the only correspondence address used by the Tribunal.
28. None of the tribunal documents set out in paragraphs 24 and 25 above came to the attention of the respondent. The respondent has still not had sight of the ET1 issued by the claimant.
29. The first correspondence received by the respondent about the claimant's claim was a warning notice dated 16<sup>th</sup> May 2022 received from the ET Financial Penalties Team (page 2 of the respondent's bundle). This was a letter addressed to It was sent by email to the respondent.
30. On the same day, 16<sup>th</sup> May 2022, Ms. S. McCarthy sent an email (page 4 of the respondent's bundle) to the ET Financial Penalties Team in which she stated:

*"I was shocked to have received by e-mail today notice of a penalty being made against the company.  
I was not made aware of any tribunal hearing and have therefore not been given the chance to defend the claim made."*

The e-mail went on to ask for advice as to the process for setting the judgements aside so the claim could be defended on the basis that the respondent was not the claimant's employer.
31. Further correspondence from the ET Financial Penalties Team (page 4 of the respondent's bundle) directed the respondent to contact the Cardiff Tribunal office.
32. On 29<sup>th</sup> May 2022, Ms. S. McCarthy contacted the Wales ET requesting a reconsideration of the judgment of 18<sup>th</sup> February 2022.
33. The respondent changed its name from Wok to Go Ltd. to Consultancy Solutions 22 Ltd. on 25<sup>th</sup> August 2022.

## **The Law**

34. Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunals Rules of Procedure. Rule 70 provides:

*"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."*
35. The parties did not direct the Tribunal to any legal authority during their

submissions but it takes notes of the body of case law which reminds it that the issue must be determined in accordance with the overriding objective and that the Tribunal's discretion must be exercised judicially and with regard, not just to the interests of the party seeking the reconsideration, but also to the interests of the other party and to the public interest requirement that there should, as far as possible, be finality of litigation.

## **Conclusions**

36. The ET1 and notice of hearing were properly sent to the respondent's registered office of 110 Caerphilly Road, Cardiff CF14 4QG on 21<sup>st</sup> June 2021 but they did not come to the attention of the respondent which had ceased to have any presence at or connection to that address in March 2021.
37. The judgment dated 18<sup>th</sup> February 2022 was not sent to the respondent's registered office as that had changed to 2 Import Building, Ground Floor, 2 Clove Crescent London E14 2BE on 7<sup>th</sup> October 2021.
38. The respondent acted promptly upon discovery of the claim and judgment. It became aware of the matter on 16<sup>th</sup> May 2022 when it received correspondence from the ET Financial Penalties Team directed to its new registered office. Ms. McCarthy, on behalf of the respondent, replied to that correspondence the same day confirming the respondent was unaware of the hearing and had not had an opportunity to defend the claim. She then requested a reconsideration of the judgment on 29<sup>th</sup> May 2022.
39. The claimant's case is that the reconsideration request should be refused as she has waited a long time already to see a resolution of her claim. The Tribunal notes the claimant's concern and has balanced the prejudice of delay caused to the claimant with the prejudice caused to the respondent of being unaware of the claim and therefore unable to defend it.
40. The Tribunal is mindful of the importance of finality but this has to be considered in the context of dealing with cases justly. On balance in this case, the respondent has shown that the prejudice caused to it by not reconsidering the judgment outweighs that caused to the claimant by the delay that a reconsideration causes.
41. As the claim did not come to the attention of the respondent, it was unable to enter an appearance and defend it. The respondent disputes the basis of the claim against it and it is in the interests of justice that the request for reconsideration be granted, the judgment of 18<sup>th</sup> February 2022 be revoked and the respondent have the opportunity of seeing the details of the claim set out in the claimant's ET1 and responding to it.
42. During the course of the reconsideration hearing the parties' evidence revealed a dispute as to the identity of the claimant's employer. No findings of fact have been made in this judgment of that dispute. It is a matter to be litigated anew now that the judgment has been revoked.
43. However, in accordance with the overriding objective, a second

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respondent is added to the claim and separate case management directions are issued in relation to the future conduct of this claim.

Employment Judge **S. Evans**

Date 12th December 2022

JUDGMENT SENT TO THE PARTIES ON 15 December 2022

FOR THE TRIBUNAL OFFICE Mr N Roche

NOTE: Reasons were given orally at the hearing. In accordance with Rule 62 (3) of the Employment Tribunal Rules of Procedure 2013, no written reasons will be provided unless requested by a party at the hearing or in writing within 14 days of sending the written record of the decision.