



# EMPLOYMENT TRIBUNALS

London South Employment Tribunal (remote) on 13th December 2022

Claimant

Between

Respondent

**Ms Victoria Selina Shorter**

&

**Kent Central Ambulance Service Ltd**

Before

Judge M Aspinall (sitting as an Employment Judge)

Appearances

Ms V Shorter (in person)  
Mrs A Patton (for the Respondent)

## APPLICATION FOR RECONSIDERATION Judgment

1. **For the reasons that follow, I refuse the application for reconsideration made on 30 December 2022. I do not consider that there is a proper basis upon which I could revoke or vary my original decision.**
2. I gave a full oral decision in this claim at the conclusion of the hearing held before me on 13 December 2022 (via CVP/video). My judgment was that all claims brought by the Claimant were dismissed as they had not been made out. I gave a detailed explanation of my reasons for making those findings.
3. A judgment was issued by me that day - in summary form - which was sent to the parties on 14 December 2022.
4. In an email sent to the Tribunal on 27 December 2022 at 21:23, the Claimant enquired about what she needed to do to ask for a reconsideration of my decision in relation to her holiday pay - how it had been calculated by the Respondent. The Claimant did not send a copy of this email to the Respondent. She did not set out the basis upon which she wished me to reconsider my decision.
5. At 10:44 on 29 December 2022, the Tribunal Office replied. Their email reminded the Claimant of the necessity to send a copy of all emails, sent to the Tribunal, to the Respondent and explained why that was necessary. The same email also stated: "*You will need to submit an application, copied to the Respondent, for reconsideration giving full reasons, which may include a statement of your calculations*".
6. By a further email sent at 13:02 on 30 December 2022, the Claimant explained that she had not been able to send a copy of her emails to the person who had represented the Respondent before me as they had left the organisation in October (which was, in fact, prior to the hearing). I note that this would not have prevented the Claimant from sending copies of her messages to one of the other directors of the Respondent company; thereby complying with her obligation to do so.
7. Ultimately, at 19:48 on 30 December 2022, the Claimant sent a further email to the Tribunal which, although brief and not as fully detailed as it might have been, I take to be her application for reconsideration of the holiday pay claim decision which formed part of my overall judgment.

8. In that email, the Claimant says that her holiday pay was consistently mis-calculated by the Respondent. She set out the basis on which she considered her holiday pay ought to have been calculated and asked me to reconsider my decision on that basis. I note that, again, this email was not copied to the Respondent.

### **Timeliness and notice**

9. Rule 71 (The Employment Tribunal Rules of Procedure 2013 as amended (“Rules”)) deals with making an application for reconsideration of a judgment. That Rule reads:  
*"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".*
10. Firstly, the Claimant did not copy her application to the Respondent as required by the express terms of Rule 71. This was despite being reminded of the necessity to do so a day earlier. Secondly, any application for reconsideration must be made within 14 days of the date on which the written decision (in this case my judgment from 13 December 2022) was sent to the parties. My judgment was sent to the parties on 14 December 2022 so any application for reconsideration needed to be made by 28 December 2022.
11. The email sent by the Claimant on 27 December 2022 was not an application - and even if it could have been so viewed, it was not copied to the Respondent. The earlier email sent by the Claimant on 30 December was, likewise, not an application, was not copied to the Respondent and would have been out of time in any event even if it was a properly presented application for reconsideration.
12. The eventual application - and I consider it generous to consider it as such - received later on 30 December was not copied to the Respondent and as is apparent from the date, was sent two days after the expiry of the 14-day time limit to make such an application.
13. The covering letter sent with the judgment on 14 December 2022 sets out both where to find information on enforcing or disagreeing with a judgment. It also, expressly and in a separate table, sets out the time limits for requesting a reconsideration or written reasons for a judgment. These were not unclear pieces of guidance.
14. I am satisfied that the Claimant had ample opportunity to apply for reconsideration before the expiry of the relevant time limit. I am also satisfied that, even accepting her second email of 30 December, as being an application for reconsideration, it was not properly served on the Respondent in accordance with the Rules and so was not properly made at all.
15. That is sufficient to dispose of the application entirely. However, for completeness, I will also briefly address two other points.

### **Unfair dismissal and holiday pay due on dismissal**

16. The claims which were brought to the Tribunal related to unfair dismissal and to holiday pay accrued but unpaid at the termination of the Claimant's employment. The latter of these claims was, said the Claimant, both an amount due for untaken holiday and an amount due because her holiday pay had been miscalculated by the Respondent.
17. Considering the evidence adduced before me - both written and oral - I found that the Claimant had been neither dismissed nor resigned from her employment. I found that to be the case as at the date of both her claim (April 2022), the date on which she said her employment had ended (January 2022) and the hearing (in December 2022). I found, as a matter of fact and law, that the Claimant was still employed by the Respondent by the date of the hearing.

18. As a result, she was not able to bring a claim for unfair dismissal (she had not been dismissed, her employment was continuing). I also found that she could not properly bring a claim for unpaid holiday pay due at termination since her contract subsisted and had not been terminated by either party. I also found that the Respondent had properly calculated the Claimant's holiday pay and entitlement based on the 52-worked-week (i.e., discounting non-worked weeks and going back to a maximum of 104 weeks to find 52 worked weeks) average of her earnings as a zero-hours employee.

**Judge M Aspinall on Tuesday, 10th January 2023**