



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**                      **Ms M Martin**  
**Respondent**                  **Vinci Construction UK Limited**  
**Employment Judge**        **A Matthews In Chambers**

## RECONSIDERATION JUDGMENT

Acting in accordance with rules 2, 5, 29 and 72 of the Employment Tribunals Rules of Procedure 2013 (the “Rules”) the Employment Judge varies the date for the payment of the deposit set out in the Deposit Order made on 2 November 2022 and sent to the parties on 15 November 2022 (the “Deposit Order”) from *“not later than 21 days from the date this Order is sent”* to *“not later than 12 December 2022”*. The strike-out, that took effect at midnight on 6 December 2022, is revoked and Ms Martin’s claims remain to be heard.

## REASONS

### Introduction

1. A brief record of recent developments in the case is appropriate.
2. The Deposit Order was sent to the parties on 15 November 2022. Ms Martin was required to pay a deposit of £1,000 as a condition of being permitted to continue her claims. The payment was required to be made on or before 6 December 2022. If it was not, the effect of rule 39(4) of the Rules is that the claims would be automatically struck out.
3. Ms Martin sent a banker’s draft for the deposit through Royal Mail at 1224 on 5 December 2022 by “Special Delivery Next Day Guaranteed by 9am”. In the event, the banker’s draft was delivered by Royal Mail at 0838 on 8 December 2022.
4. Notification that the deposit had been received was sent by HMCTS Finance Support Centre to the London South office of the employment tribunals on 12 December 2022.

5. On 14 December 2022 the Respondent's solicitors sent an email to the employment tribunals (copy to Ms Martin). They pointed out that, under rule 39(4) of the Rules, the claims had been struck out. (Note: under the Rules this occurred at midnight on 6 December 2022 - see rule 4).
6. On 15 December 2022 Ms Martin sent an email to the employment tribunals (copy to the Respondent's solicitors). Ms Martin explained what had happened and provided documentary evidence (see paragraph 3 above).
7. On 6 January 2023 the employment tribunals wrote to the parties on the directions of Employment Judge Siddall. In summary EJ Siddall made these points:
  - Ms Martin's claims had been struck out under rule 39(4) of the Rules.
  - Ms Martin's email of 15 December 2022 was treated as an application for reconsideration of the strike out of the claims.
  - EJ Siddall's provisional view was that the application should be granted on the basis that Ms Martin had posted the deposit by special delivery on 5 December 2022.
  - The parties were invited to provide their further views and to indicate whether they considered the matter could be determined without a hearing by reference to rule 70 of the Rules.
  - The file would then be referred to this Employment Judge.
8. On 12 January 2023 the Respondent's solicitors responded to EJ Siddall in an email (copied to Ms Martin). They opposed any reconsideration. The email can be referred to for its full content, but the salient points were:
  - Ms Martin had left it too late to pay the deposit and too late to apply for a reconsideration of the Deposit Order.
  - The merits of Ms Martin's case were weak and this should be taken into account.
  - It would be in accordance with the overriding objective not to disturb the strike out on the grounds of equal footing, proportionality and expense.
  - Helpfully, in the circumstances, that the application could be decided on the papers.
9. Nothing further has been heard from Ms Martin.

### **Applicable law**

10. The Employment Judge must consider this application by reference, in particular, to rules 1, 5, 29, 70, 71 and 72 of the Rules. So far as they are applicable, they read as follows:

*"1 Interpretation" ....*

*"(1) in these Rules-" ....*

*"(3) An order or other decision of the Tribunal is either-*

- (a) a “case management order”, being an order or decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment; or
- (b) a “judgment”, being a decision, made at any stage of the proceedings (but not including a decision under rule 13 or 19), which finally determines-
  - (i) a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs);
  - (ii) any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue);”

**“5 Extending or shortening time**

*The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.”*

**“29 Case management orders**

*The Tribunal may at any stage of the proceedings, on its own initiative or on application, make a case management order. Subject to rule 30A(2) and (3) the particular powers identified in the following rules do not restrict that general power. A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.”*

**“39 Deposit orders” ....**

*“(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out.”*

**“70 Principles**

*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.*

**71 Application**

*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 Process**

*(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.*

*(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the*

*reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.”*

11. The provisions of rule 2 of the Rules (Overriding objective) are paramount.

### **Conclusions**

12. The Deposit Order is a case management order, which may be varied under rule 29 of the Rules.

13. When a claim is struck out under rule 39(4) of the Rules, the strike out is a judgment which may be reconsidered under rule 70 of the Rules.

14. The Employment Judge considers that a hearing is not necessary in the interests of justice.

15. The circumstances of this case are unusual. However, considering the interests of justice and dealing with the issue fairly and justly it seems to the Employment Judge that the claims should be allowed to proceed and the above judgment entered. In reaching this conclusion the Employment Judge has considered all the circumstances and the Respondent's arguments but, in particular, the following:

- Ms Martin clearly intended to pay the deposit within the time limit originally specified. Although Ms Martin might have been best advised to make the payment earlier, the fact that it arrived late was not her fault.
- The merits of the claim have been subjected to the “hurdle” of the Deposit Order. Ms Martin has taken the steps necessary to jump that hurdle. It would be unjust to take any further account of the Employment Judge's view on the merits of Ms Martin's case in considering what is in the interests of justice and the fair and just step to take in these circumstances.

16. Accordingly, the Employment Judge gives Judgment as set out above.

Employment Judge A Matthews

Date: 15 January 2023

Sent to the parties on

Date: 26 January 2023