



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs. L Tailby

**Respondent:** 1. Busy Bees Nurseries Limited 2. Busy Bees Limited  
3. Busy Bees Holdings Limited

## JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

UPON considering on 7 February 2023 the claimant's application for reconsideration dated 28 September 2022:

The claimant's application for reconsideration is granted. The strike out judgment dated 8 August 2022 is revoked.

## REASONS

### Background

1. The tribunal wrote to the claimant on 7 July 2022 to ask for any representations as to why the claim should not be struck out as it appeared not to be actively pursued.
2. The tribunal did not receive any response to this correspondence. Therefore, on 8 August 2022 I struck the claim out.
3. On 29 September 2022 the claimant applied for reconsideration through her solicitor. The claimant's solicitor explained that they had been preparing for the preliminary hearing which was listed for 29 September 2022. They sent in documents for that hearing, and it was only then that they learned of the strike out judgment. They had not received either the letter of 7 July or the judgment of 8 August until 28 September.
4. The claimant's solicitor further explained that although the same firm had been representing the claimant throughout there had been a change of fee earner handling the matter in April 2022 and the previous fee earner had left the firm. The claimant's solicitors had written to the tribunal on 21 April to explain that and give the contact details of the new solicitor but since then they had not received any correspondence from the tribunal. It was therefore suggested that

the Tribunal must not have been using the correct contact details. These were the grounds relied upon to show that it was in the interests of justice to reconsider the strike out judgment.

5. I gave the respondents the opportunity to respond to the claimant's application. They did this by email dated 30 November 2022. The respondents objected to the proposal to reconsider the strike out judgment. They said the claimant's solicitors should have monitored the email account of the solicitor who left. They pointed out the reconsideration application was late. They suggested that the respondent would be disadvantaged due to the passage of time.
6. I have established that the correspondence of 7 July and 8 August 2022 was indeed sent to the email address of the solicitor who had left the claimant's solicitors. Therefore probably by oversight of the tribunal staff the claimant's solicitors' email of 21 April appears to have been missed and so the documents were sent to the wrong address
7. I decided to consider the application without a hearing because neither party suggested there should be a hearing and I considered it was not necessary in the interests of justice.

## Law

8. Rule 70 of the Tribunal's rules of procedure provides as follows: "*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.*"
9. When dealing with the question of reconsideration I must seek to give effect to the overriding objective to deal with cases 'fairly and justly' (Rule 2). This includes:
  - a. ensuring that the parties are on an equal footing
  - b. dealing with cases in ways which are proportionate to the complexity and importance of the issues
  - c. avoiding unnecessary formality and seeking flexibility in the proceedings
  - d. avoiding delay, so far as compatible with proper consideration of the issues; and
  - e. saving expense.
10. I should also be guided by the common law principles of natural justice and fairness.
11. In Outasight VB Ltd v Brown 2015 ICR D11, EAT, Her Honour Judge Eady QC explained that the wording 'necessary in the interests of justice' in rule

70 allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, *'which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation'*.

## Conclusions

12. It appears clear that this claim was struck out because the claimant's solicitor did not receive a crucial piece of correspondence from the tribunal, namely the letter of 7 July. If they had received that letter the claimant's solicitor could have responded and explained that the claim was actively pursued which would make it very unlikely that the claim would have been struck out. The error appears to be the fault of the tribunal because the claimant's solicitor's email of 21 April was not picked up meaning the correspondence was sent to the wrong address. I do not attach any great weight to the respondent's point that the claimant's solicitors should have monitored the email address of the solicitor who left because it appears to me that the claimant's solicitors did the right thing in notifying the tribunal of the change of solicitor and they had no reason to think that email would not be acted upon.
13. In these circumstances it seems clear to me that the interests of justice require a reconsideration of the strike out judgment. The claim has only been struck out because the claimant and her solicitors were through no fault of their own unaware of a crucial piece of correspondence. Had the claimant's solicitors received the correspondence they could have taken steps to ensure the claim was not struck out. In my judgement the interests of justice require revocation of the strikeout judgement. The importance of maintaining finality of litigation is outweighed by the injustice to the claimant caused by the fact that, through no fault of her own, she was not aware of a crucial piece of correspondence. It would not be just or fair to maintain the ultimate sanction of strike out in these circumstances.
14. I also considered the prejudicial effect of delay upon the respondent however I do not consider this is determinative because I consider that a fair hearing is still possible and the injustice to the claimant outweighs the importance of avoiding delay. No specific issue was raised by the respondents regarding why delay would create injustice in this case; it was just a general point about memories fading. My view therefore remains that reconsideration and revocation is necessary in the interests of justice.
15. I have also considered the point about the application being made out of time. Rule 71 stipulates that an application for reconsideration shall be made within 14 days of the judgment being sent to the parties. The strike out judgment in this case was sent on 9 August and the application was not made until 29 September. Rule 5 gives the tribunal a discretion to extend time. The claimant

did not learn of the strike out judgement until 28 September. As I have already explained that came about through no fault of the claimant and it was as a result of error on the part of the tribunal. Until that point the claimant had been preparing for a hearing which she expected to take place on 29 September. The claimant acted very promptly to make her application on 29 September once she learned of the strike out on 28 September. I would extend time in this case for those reasons.

### **Next steps**

16. The claim is reinstated and the preliminary hearing for case management will be relisted asap.

Employment Judge Meichen  
Date 7.2.23