



# EMPLOYMENT TRIBUNALS

**Claimant**

Miss J Lerbs

**Respondent**

-v- Ms Helen Bates t/a Helen Bates Eventing

## **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

The Respondent's application for reconsideration is granted and the Judgment of 8 June 2023 is set aside.

## **REASONS**

1. The Respondent has applied for a reconsideration of the Judgment dated 8 June 2023 which was sent to the parties on 21 June 2023. The grounds are set out in her application of 25 July 2023.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). 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 outside the relevant time limit.
3. Under rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
4. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. The earlier case law suggested that the 'interests of justice' ground should be construed restrictively. The Employment Appeal Tribunal in *Trimble-v-Supertravel Ltd* [1982] ICR 440 decided that, if a matter had been ventilated and argued at the hearing, any error of law fell to be corrected on appeal and not by review. In addition, in *Fforde-v-Black* EAT 68/80 (where the applicant was seeking a

review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean “*that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order*”. More recent case law has suggested that the test should not be construed as restrictively as it was prior to the introduction of the overriding objective (which is now set out in rule 2) in order to ensure that cases are dealt with fairly and justly. As confirmed in *Williams-v-Ferrosan Ltd* [2004] IRLR 607 EAT, it is no longer the case that the ‘interests of justice’ ground was only appropriate in exceptional circumstances. However, in *Newcastle Upon Tyne City Council-v-Marsden* [2010] IRLR 743, the EAT stated that the requirement to deal with cases justly included the need for there to be finality in litigation, which was in the interest of both parties.

5. In this case, proceedings were served on the Respondent at an address provided by the Claimant at the following postcode; GL7 7EX. No response was received and a Judgment was issued under rule 21 in default.
6. In the Respondent’s letter of 25 July, it was stated that, after the initial ACAS communication, she did not receive the Claim Form and, as such, was not able to reply to it. The Claim Form had been sent to a property named the ‘Equine Barn’ at the postcode referred to above. The Respondent accepted that, whilst that had been where the Claimant had worked, it was not an actual postal address and the correct address was 3 Marsden Manor Farm Cottages, an address which shared the same postcode.
7. In the Claimant’s response of 30 August, she has indicated that there are 12 addresses which share the same postcode. She has also indicated that the Respondent has taken steps to try to avert the possibility that post would go astray by placing signs indicating where she can be contacted.
8. Whilst accepting that the Respondent’s use of the ‘Equine Barn’ address business may have led the Claimant to the reasonable belief that that was where the documentation ought to have been directed, there is sufficient doubt that the correspondence reached its intended recipient to allow the Judgment to be set out aside. The Claimant has not been able to challenge the veracity of the Respondent’s claims that she did not receive the Claim Form. The prejudice of the Respondent being shut out of a defence would be greater than the Claimant’s in suffering a short delay.
9. It is in the interests of justice to set the Judgment aside out of time. It is also in the interests of justice to deal with the matter on paper since both sides

have had a reasonable opportunity to provide there accounts in writing (rule 72 (2)).

10. The claim will be re-served and the Respondent will eb entitled to defend it.

Employment Judge Livesey

Date: 14 September 2023

Judgment sent to Parties: 3 October 2023

For the Tribunal Office