



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss D Reynolds  
**Respondents:** Ian Pritchard  
**Heard at:** Bristol (decision on papers in Chambers)  
**Before:** Employment Judge Midgley

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

The respondent's application for reconsideration is refused because there is no reasonable prospect of the respondent demonstrating that it is in the interests of justice for the Judgment to be varied or revoked.

## REASONS

### The application

1. On 15 February 2024 the respondent applied for reconsideration of the Judgment dated 22 September 2023 which was sent to the parties on 6 February 2023 ("the Judgment"). There reason for the apparent significant delay between the Judgment being issued and it being sent to the parties is addressed below.
2. The grounds of the application were contained in a document attached to the application.
3. 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 within the relevant time.

### **The Procedural History**

4. The claimant was dismissed on 6 January 2023. She initiated early conciliation on 4 February 2023 and a certificate was issued on 18 March 2023.
5. The claim was presented on 17 April 2023. The ET1 named the respondent, giving an address at Bude and North Cornwall Golf Club, Burn View, EX23 8DA. The ECC was issued in respect of The Coffee Pot (Bude) Ltd, at The Coffee Pot, 6 Morwenna Terrace, Bude EX23 8BU.
6. The primary limitation date expired on 5 April 2023, but as a consequence of the provisions of s.18A of the Employment Tribunals Act 1996 and s.207B of the Employment Rights Act 1996, the time limit was extended by the 42 days of conciliation. The claim was therefore presented in time.
7. On 2 June 2023 a Judge directed the claimant to confirm whom the claim was brought against given the difference in names on the ECC and ET1. On 15 June the claimant confirmed that the claim was brought against Mr Pritchard individual as he was her employer and explained that her wages were paid through the company named on the ECC, which was the reason that had been named.
8. EJ Bax reviewed that information and accepted the claim pursuant to Rule 12 . He directed it should be served with the two emails above which identified the reason for the difference in the respondent's identification. The claim was served by post on the respondent on 7 July 2023 at the Bude and North Cornwall Golf Club.
9. The respondent emailed the Tribunal on 4 August 2022 stating that he had been advised by ACAS of the existence of a claim against him.
10. On 26 September 2023, on the direction of a legal officer, the claim was re-served on the respondent using the email address the respondent had used on 4 August 2023. The respondent was advised that the time limit for submitting a response had elapsed and that he would need to make an application to submit a response out of time, together with a draft ET3, if he wished to defend the claims.
11. The respondent replied on 27 September 2023, but did not submit a response. The Tribunal therefore sent a further reminder of how the respondent could defend the claims and of the need to make application. A further blank ET3 was attached for that purpose.

12. Nothing further was heard from the respondent and on 29 November 2023 a response not received letter was sent warning that a Judgment would be issued under Rule 21.
13. On 6 December 2023, the respondent emailed the Tribunal suggesting he had submitted a response. Consequently, on 22 December 2023, EJ Ferguson informed the respondent that no ET3 had been received and directed him to confirm the date and method by which he had submitted the response. He was further directed to provide a copy of the draft ET3 and the supporting application for an extension of time.
14. Again, nothing was heard from the respondent. A direction to comply with the direction of 22 December 2023 by return was sent on 10 January 2024. A week later the respondent replied suggesting he would respond in the 'next few days.'
15. Nothing further was heard from the respondent.
16. Consequently, on 22 January 2024, I directed that the draft Rule 21 Judgment should be amended to include claims for loss of earnings, and that the other claims brought by the claimant against the respondent should be reviewed to see whether there was no response in respect of those claims and, if so, whether they should be joined and a single Rule 21 Judgment issued.
17. Regrettably, the Tribunal staff instead issued Judgment in my name, but my signature was not on the Judgment as it was not referred back to me. Additionally, the Judgment was dated 22 September 2023, when in fact it was issued on 6 February 2024, and if it were to be dated from the date of my referral, it should have been dated 22 January 2024.

### **Grounds of the application**

18. The permissible grounds for reconsideration are only those set out in Rule 70, namely that it is in the interests of justice to vary or revoke the Judgment.
19. The respondent identifies the following grounds for reconsideration of the Judgment:
  - a. The claim was issued out of time – there is nothing in this point. The claim was issued in time when allowance for the extension of time attributable to ACAS conciliation.
  - b. The respondent submitted his ET3 in September – This point is entirely without merit. The notice of claim identified that any response had to be submitted by 4 August 2023. The respondent was advised on 26 September 2023 that he would need to submit an

application for an extension of time in order to submit his response. He was reminded of the need to do so on two further occasions, first by EJ Bax on 24 October, then by EJ Ferguson on 22 December 2023. He was chased for a response in January 2024. He made no substantive response.

- c. The respondent raised arguments in relation to the merit of the substantive claims, however, there are of no avail to the respondent in circumstances where he failed to submit a response and it was that failure, rather than the merits of the claims, which led to the issue of a Rule 21 Judgment.

### **Conclusions**

20. In Fforde v Black EAT 68/60 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”.
21. There was no denial of natural justice in this case; rather I form the view that the respondent’s application for reconsider is entirely without merit and is misconceived. If it were permissible to make an award of costs against him under rule 76 on the basis that his application was unreasonable and a waste of Tribunal resources, I would have done so. Regrettably, it is not.
22. Accordingly, I dismiss the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the respondent demonstrating that it is in the interest of justice for the Judgment to be varied or revoked.
23. I will however direct that a certificate of correction should be issued under Rule 69 to change the date of the Judgment from 22 September 2023 to 22 January 2024.

Employment Judge Midgley  
Date: 23 February 2024

Judgment sent to the Parties: 27 February 2024

FOR THE TRIBUNAL OFFICE