



**Claimant:** Mr G Davis

**Respondent:** Johnson's Leisure Limited

**HELD AT:** London South by CVP

**ON:** 14 December 2023

**BEFORE:** Employment Judge Fearon

**REPRESENTATION:**

**Claimant:** Mr Arnold, lay representative

**Respondent:** No attendance

## **JUDGMENT ON AN APPLICATION FOR RECONSIDERATION**

The respondent's application for reconsideration dated 11 January 2024 is refused because there is no reasonable prospect of the original decision being varied or revoked.

## **REASONS**

### **Introduction**

1. At the final hearing on 14 December 2023, judgment was entered for the claimant. The respondent did not attend the final hearing. The respondent on 12 January 2024 requested written reasons. Written reasons were subsequently given dated 13 February 2024. The respondent's letter dated 11 January 2024 setting out the respondent's application for reconsideration was sent to the claimant on 26 January 2024 and sent to the judge on 26 February 2024.

## **Principles of Reconsideration**

2. With an application for reconsideration, as at any stage in the proceedings, the tribunal must give effect to the overriding objective found at Rule 2 Employment Tribunals Rules of Procedure 2013. This says:

“2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (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.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

3. Rule 70 provides a power to confirm, vary or revoke a judgment. This provides that a judgment can be reconsidered “if it is in the interests of justice to do so”. Rule 71 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration is made in time.

4. Rule 72 (1) of the Rules provides:

“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.”

## **Grounds and reasons of reconsideration application**

5. The application for reconsideration submitted by Mr Antony Dunger, director, states: *“neither myself nor my co-Directors were made aware of the tribunal until we received an email from the Claimant’s solicitor which was sent to a generic email address at our company’s registered address on 19th December 2023, after the case had been heard.”* Further the Respondent says: *“nobody in a position of any appropriate authority at our organisation had been served with or sent any documentation pertaining to the case. As a result, due to a complete unawareness of the tribunal’s existence, we were not present at the hearing.”*

6. The Claimant objects to the Respondents reconsideration application on the basis that:

6.1 *“All Tribunal correspondence was correctly address [sic] to the correct [sic] named person at the Respondent at the correct address.”*

6.2 *“The HR Manager Mr Richard Smith was a person of ‘appropriate authority’ at the Respondents organisation.”*

### **Decision on the reconsideration application**

7. The respondent did not participate in the hearing on 14 December 2023. The Tribunal checked and was satisfied that the respondent had been sent written notification of the hearing to the email address provided by the respondent in the respondent’s ET3 response form. The email address was that of Mr Richard Smith. Mr Smith completed the ET3 and had been involved in the ACAS Early Conciliation on behalf of the respondent and had engaged with the claimant’s legal representative in dealing with the claim on behalf of the respondent. The respondent did not attend the case management hearing on 22 June 2023, even though notice of the hearing had been sent to the respondent. The respondent was contacted on the morning of the case management hearing and Mr Smith, the respondent, confirmed he would not be in attendance. He did not indicate anyone else from the respondent would attend instead of him. The Tribunal clerk contacted the respondent by telephone on the morning of the final hearing; the respondent advised the clerk that Mr Richard Smith was in a meeting all morning and therefore would not be attending the hearing. No indication was given to the claimant, his legal representative or the Tribunal at any time that Mr Smith was acting without authority nor that the respondent was unaware of the proceedings.

7. I remain of the view for the reasons already expressed in the written reasons provided to the parties, that in all the circumstances it was proportionate, further to the overriding objective and in the interests of justice to strike out the respondent's response to the claim for failing to comply with the Order of the Tribunal dated 27 June 2023 with regard to the exchange of documents and because the defence to the claim had not been actively pursued. There was no defence to the claim presented and the respondent has not identified any reason why the response should not have been struck out nor any evidence that there was otherwise any defence to the claim. It is a fundamental requirement of litigation that there is certainty and finality.

8. For the reasons set out above, the original judgment stands.

Employment Judge Fearon

Dated: **29 February 2024**

SENT TO THE PARTIES ON **19 March 2024**

FOR THE TRIBUNAL OFFICE

Notes

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>