



EMPLOYMENT TRIBUNALS

Claimant: Mr Pawel Janowski
Respondents: London Real Estate Rentals Limited
Luis Felipe Tilleria Limongi

PRELIMINARY HEARING

Heard at: London Central

On: 16th February 2024 (by CVP)

Before: Employment Judge Gidney

Appearances

For the Claimant: Mr Janowski, acting in person.

For the Respondents: Unrepresented

RECONSIDERATION JUDGMENT

The 1st Respondent's application for a reconsideration of the Judgment on 28th February 2024, on the grounds that it seeks an extension of time to file an ET3 Response, is refused.

REASONS

1. The Claimant's Claim Form was presented on 1st August 2023 and a Notice of Claim was sent to the 1st Respondent on 16th August 2023. The 1st Respondents failed to file a Response Form to the Claimant's claim by 13th September 2023. On 17th January 2024 the 1st Respondent was sent a Notice of Hearing for 16th February 2024. On 14th February the 1st Respondent was ordered by the Regional Employment Judge, in an email acknowledged by the 1st Respondent to be a valid

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and correct email, to state whether it wished to defend the Claim and if so make an application for an extension of time and provide its ET3 Grounds of Resistance by 4pm that day. It did not do so. The Regional Judge's email warned that it default it was likely that a Judgment would be issued without further notice. The 1st Respondent failed to attend the hearing on 16th February 2024. A Rule 21 Judgment was issued that day awarding Judgment to the Claimant in the sum of £1,309.00.

2. That Judgment was sent to the parties on 28th February 2024. Rule 71 of the Tribunal Rules of Procedure requires that any reconsideration application must be received within 14 days, in other words by 13th March 2024. On 15th March 2024, the 1st Respondent's application was received, 2 days outside of the time limit allowed by the Rules.
3. The grounds for the reconsideration were a request for an extension of time to file an ET3 Grounds of Resistance. Rule 20 the Tribunal's Rules of Procedure requires and request for an extension is made in writing, copied to the Claimant, sets out the reason for the delay and is accompanied by a draft ET3 Grounds of Resistance.
4. The Respondent's application was in writing and was sent to the Claimant. It asserted that the reason for the delay was not learning of the Claim until after the Judgment. No draft ET3 Grounds of Resistance was attached. As close as the application came to setting out a defence was a reference to the Claimant being engaged under a training agreement of a self-employed nature.
5. The Tribunal has power to reconsider any judgement where it is necessary and in the interests of justice to do so. Rule 72 of the Employment Tribunals Rules of Procedure sets out the process for reconsideration requests. It directs that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused.
6. In **Trimble v Supertravel Ltd** [1982] IRLR 451 the Employment Appeal Tribunal stated, '*If the matter has been ventilated and properly argued at the original hearing, than errors of law of that kind fall to be corrected by this Appeal Tribunal*'. The EAT emphasised that the reconsideration procedure is there so that where there has been an oversight or some procedural occurrence, such that a party cannot be said to have had a fair opportunity to present their arguments

on a point of substance, they can bring the matter back to the tribunal for adjudication. An application for reconsideration under all 70 must include a weighing of the injustice to the applicant if the reconsideration is refused, and the injustice to the respondent, if it is granted, also giving weight to the public interest in the finality of litigation: **Phipps v Primary Education Services Limited** [2023] EWCA Civ 652. It is valuable to draw attention to the importance of the finality of litigation and the view that it would be unjust to give the losing party a second bite of the cherry: **Newcastle Upon Tyne City Council v Marsden** [2010] ICR 743.

7. The factors to be considered in determining whether it is in the interests of justice to reconsider a decision can still include the specific grounds identified in the 2004 Rules of Procedure, namely (i) whether decision was wrongly made as a result of an administrative error; (ii) where a party did not receive notice of the proceedings leading to the decision, (iii) where the decision was made in the absence of a party; and (iv) when evidence had become available since the conclusion of the hearing which could not have been reasonably known or foreseen at the time.
8. The 1st Respondent's application for a reconsideration is refused on the following grounds:
 - 8.1. Whilst it is accepted that the 1st Respondent was not at the hearing and that it asserts that it had no knowledge of the hearing, the 1st Respondent accepts that the warning from the Regional Judge, sent two days before the hearing, to either apply for an extension of time with a draft defence to the claims or face Judgment being entered, was received by 1st Respondent having been sent to its general email inbox. Thus it cannot be said that notice of the hearing had not been received,
 - 8.2. No defence to the claim, in the form of an ET3 Grounds of Resistance has been provided, either in time for the hearing or attached to the 1st Respondent's reconsideration request in breach of rule 20 of the Rules. The reference to the Claimant being engaged under a training agreement would not preclude a finding that he was a worker and thus entitled to his money claims (holiday pay and arrears of pay).
 - 8.3. The application for a reconsideration was not received by the Tribunal within the time allowed by the Rules, in breach of Rule 71 of the Rules.
 - 8.4. The finality of litigation is an important principle.

9. In all of the circumstances it is my judgment that there is no reasonable prospect of the original decision being varied or revoked, because, for the reasons stated above, it would not be in the interests of justice to do so.

Employment Judge **Gidney**

Dated this 27th March 2024

JUDGMENT SENT TO THE PARTIES ON

9 April 2024

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