



# EMPLOYMENT TRIBUNALS

## London South Employment Tribunal

**Claimant:** Ann Bevan  
**Respondent:** Central Education Limited  
**Before:** Judge M Aspinall (sitting alone as an Employment Judge)

### Decision

Rules 70-72 of The Employment Tribunals Rules of Procedure 2013 (as amended)

The application, by the Respondent, for reconsideration of my judgment handed down on 10 April 2024 is refused as I find that there is no realistic prospect of it being revised or revoked.

#### Background

1. The Claimant, Ms. Ann Bevan, brought claims against the Respondent, Central Education Limited, arising from the termination of her employment. Ms. Bevan commenced employment with the Respondent on 1 September 2018, and her employment ended on 31 August 2023. This represents a period of employment of four years and eleven months.
2. On 19 October 2023, the Claimant commenced ACAS early conciliation. An ACAS early conciliation certificate was issued on the same date. The Claimant presented her claim to the Tribunal on 12 December 2023. In a notice of claim on 17 January 2024, the Tribunal gave the Respondent until 14 February 2024, pursuant to Rule 16 of The Employment Tribunals Rules of Procedure 2013 (as amended), to present a response to the claim.
3. On 13 February 2024, the Tribunal received an email from the Respondent requesting an extension of time, of two weeks, to present a response. Given the lateness of that application it was unlikely that it could be dealt with prior to the expiration of the time limit the following day. In any event, in their application for extension of time, the Respondent said that they needed an additional two weeks to file because their proprietor had been unwell.
4. No response to the claim was received from the Respondent by 14 February 2024, 28 February 2024 – their own suggested extended deadline, or at any time since then.
5. On 10 April 2024, I entered judgment for the Claimant under Rule 21 of the Employment Tribunals Rules of Procedure 2013. This judgment extended only to liability, and I made separate directions regarding the consideration of remedy.

#### Application for reconsideration

6. On 15 April 2024, the Tribunal received an application for reconsideration from the Respondent. This application was made within the time limit prescribed by Rule 71(1) of the Employment Tribunals Rules of Procedure 2013.
7. The Respondent seeks reconsideration of my judgment of 10 April 2024, in which I found in favour of the Claimant under Rule 21. The Respondent states that they did reply to the claim by 14 February 2024, but that they were late in receiving the claim form and therefore

did not have enough time to file a full response. The Respondent also states that they sent an email on 13 February 2024 requesting an additional two weeks to provide a full response. As they did not receive a reply to this email, they assumed that the extension was not granted.

8. The Respondent seeks to now present a full response to the claim. They state that the Claimant was not dismissed, but that she left of her own free will after being offered a position at new premises working five days a week, when she only wanted to work four days. The Respondent confirms that the Claimant was paid in full up until 31 August 2023, at the end of her contract.

## The law

### Relevant Rules

9. The framework for reconsideration in Employment Tribunals is governed by Rules 70-72 of the Employment Tribunals Rules of Procedure 2013 (as amended):

**Rule 70:** This rule empowers a Tribunal to review its own judgment or order if it believes it is in the interests of justice to do so. This review can be initiated by the Tribunal itself or upon application by a party.

**Rule 71:** This rule outlines the procedure for making a reconsideration application, including the requirement to specify the grounds and the desired outcome.

**Rule 72:** This rule provides the Tribunal with various options upon reviewing a judgment, including revoking, or varying the original judgment, ordering a rehearing, or dismissing the application.

### Case Law

10. Several key cases have shaped the interpretation and application of these rules, offering guidance on the "interests of justice" test and the admissibility of fresh evidence:
11. **Outasight VB Ltd v Brown [2015] UKEAT 0253/14/LA:** This case clarifies that the broader discretion under the 2013 Rules does not override the established principles from **Ladd v Marshall [1954] 3 All ER 745**. The "interests of justice" test still requires consideration of whether the fresh evidence could have been obtained with reasonable diligence for the original hearing and whether it would likely have had a material effect on the outcome.
12. **Ebury Partners UK Ltd v Mr M Acton Davis [2023] EAT 40:** This case emphasizes that the overriding objective and the need for a fair hearing are central to the "interests of justice" test. It highlights the importance of considering procedural fairness and whether any party was genuinely ambushed by the lack of evidence at the original hearing.
13. **Fforde v Black UKEAT/68/80:** This case demonstrates that exceptional circumstances, such as a party being wrongly denied an adjournment or facing a genuine ambush, may justify admitting fresh evidence even if the strict requirements of **Ladd v Marshall** are not fully met.

### Summary of the law

14. While the 2013 Rules provide Tribunals with greater flexibility, the principles established in **Ladd v Marshall** and subsequent case law remain relevant.
15. The *interests of justice* test requires a balanced assessment, considering the nature of the fresh evidence, the reasons for its late emergence, and its potential impact on the outcome.
16. Tribunals must ensure procedural fairness and avoid situations where parties are unfairly disadvantaged by the late introduction of evidence or submissions.

## Findings of Fact and Application of Law

17. In considering the Respondent's application for reconsideration, I have carefully reviewed the evidence and submissions presented by both parties.

### ***Receipt of Claim Papers and Response Timeliness***

18. The Respondent asserts that they received the claim papers late due to Mr Wyatt's illness and were therefore unable to respond within the stipulated timeframe. However, the evidence shows that the Notice of Claim was sent to the Respondent's registered office address on 17 January 2024.
19. While I acknowledge Mr Wyatt's unfortunate health situation, as the proprietor of a limited company, he had a responsibility to ensure appropriate arrangements were in place to handle company matters during his absence.
20. There is no objective evidence to suggest that the Notice of Claim was not received at the Respondent's address in the normal course of post.
21. Furthermore, even considering Mr Wyatt's hospitalisation in the two weeks leading up to 13 February 2024, there was ample time prior to that for a response to be submitted or for arrangements to be made for such a response.
22. The Respondent's email on 13 February 2024 requesting a two-week extension to respond supports the conclusion that the delay was primarily due to Mr Wyatt's personal circumstances rather than a late receipt of the claim papers. That request was made just 24 hours before the deadline, and there is no evidence of any follow-up attempts to ascertain the Tribunal's decision on the extension request.
23. Most importantly, the Respondent never filed a full response to the claims against them, even after the requested extension period.
24. Rule 16 of the Employment Tribunal Rules of Procedure 2013 stipulates the requirement for a response to be presented within 28 days of the date on which the claim form was sent to the respondent.
25. The Respondent's failure to comply with this requirement, without sufficient justification based on the evidence presented, weighs against granting their application for reconsideration.

### ***Presumption of Refused Extension and Lack of Follow-Up***

26. The Respondent claims to have presumed their request for an extension was denied. However, this assumption appears to be based on inaction rather than any communication from the Tribunal.
27. The absence of evidence demonstrating any attempts to follow up on the extension request or to subsequently submit a response further weakens their position.
28. The principles established in the case of *Outasight VB Ltd v Brown*, and other cases, highlight the importance of demonstrating reasonable diligence.
29. In this instance, the Respondent's failure to actively follow up on their extension request and their subsequent inaction do not align with the expected level of diligence required to justify reconsideration.

### ***Overall Conclusion***

30. Considering all the evidence and the relevant legal framework, I find that the Respondent has not provided sufficient grounds to justify a reconsideration of the judgment.
31. Their failure to respond within the stipulated timeframe, the lack of evidence supporting their claims of late receipt of documents, and the absence of demonstrable diligence in pursuing their extension request all point towards a lack of justifiable cause for reconsideration.

**Judge M Aspinall**  
**21st April 2024**