EMPLOYMENT TRIBUNALS

Claimant: **Miss Amanda Gouldingay**

Respondent: **Prestige Dental Services Limited**

RECONSIDERATION JUDGMENT

Upon reconsideration, without a hearing in accordance with rule 70(4) of the Employment Tribunal Procedural Rules 2024, the judgment of Employment Judge Camp signed by him on 21 March 2022, and consequently that of Employment Judge Perry signed by him on 19 January 2023, are set aside.

REASONS

1. The above judgment is further to: the order of His Honour Judge Shanks of the EAT dated 8 November 2024; the Respondent's reconsideration application of 25 November 2024, the [Employment] Tribunal's letter of 18 December 2024; the Respondent's emailed letter of 13 January 2025; and the order and direction of Employment Judge Camp, approved on 17 January 2025. I [Employment Judge Camp] refer to each of these.

2. A hearing is not necessary in the interests of justice because: the matter is before the EAT, which gave an indication that reconsideration was appropriate and had stayed the appeal so that this could happen; partly because there was some delay internally within the Birmingham Employment Tribunals in notifying me of the EAT's order of 8 November 2024, a reconsideration hearing probably could not take place until well after the stay expires; I formed a strong provisional view that the reconsideration application should be granted, I expressed that view in the direction and order that is contained in the Tribunal's letter of 18 December 2024, and I remain of the same view; the only party that has to my knowledge written to the Tribunal about whether there should be a hearing is the respondent and they don't want one; to my knowledge, the claimant has not responded to the reconsideration application, nor has she written in response to the letter of 18 December 2024 suggesting that the provisional view expressed in that letter was wrong; the reconsideration application therefore appears to be substantially unopposed; in any event, I don't think any useful purpose would be served by having a hearing when there is no reasonable prospect of me being persuaded that that provisional view is wrong.

3. Turning to the substance of the application, I have just explained that I remain of the same view as the one I expressed in the letter of 18 December 2024. The reconsideration

application contains one obviously meritorious point. Under rule 47 of the 2013 Rules that applied at the time, "*If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.*" The judgment I issued was not made at a hearing, but it was made immediately following a hearing and was partly based on information provided at that hearing: a telephone preliminary hearing, on 21 March 2022. The respondent did not appear at that hearing and I went ahead in the respondent's absence. Although the Respondent had not at that stage contacted the Tribunal, it appears that the claimant had provided a telephone number for the Respondent's director. Based on the relatively limited information I have available to me about what happened at that hearing, I think I did not ask the Tribunal clerk to telephone the number provided to enquire about the reasons for the Respondent's absence. (Although I cannot be sure, this was probably because I assumed the only way the Tribunal had of contacting the Respondent was by post – that is usually the position before a response is presented). In those circumstances, I think it would be contrary to the overriding objective not to set aside the judgment.

4. Although the respondent made the reconsideration application several years late (it applied for reconsideration in April 2023, but only, seemingly, of Employment Judge Perry's judgment of January 2023), it has been pursuing an appeal since April 2023. In addition, if, as I believe is the case, I erred in law when I failed to ensure that the clerk telephoned the Respondent's director on 21 March 2022, for me not to exercise my discretion and set aside my judgment would serve only to waste the time of the parties and the EAT, because all that would happen would be that the appeal went to a full hearing before the EAT where it would be successful.

5. Accordingly, reconsideration is necessary in the interests of justice and on reconsideration the decision contained in my judgment of March 2022 is set aside. As Employment Judge Perry's decision contained in his judgment of January 2023 is based on my decision, it necessarily follows that his judgment is set aside too.

6. Finally, I note, further to my order and direction of 17 January 2025, that it does not follow from the setting aside of a rule 21 judgment upon reconsideration [a rule 22 judgment under the Employment Tribunal Procedural Rules 2024 – "ETPR 2024"] that the respondent is granted an extension of time for filing a response. The relevant parts of the ETPR 2024 (and the previous, 2013 Rules) are quite different in this respect from their nearest equivalents in the Civil Procedure Rules that apply in the County and High Court. The only way to take a case out of rule 21 (as was) / rule 22 (as is) is to apply successfully for an extension of time under rule 20 (as was) / rule 21 (as is). And to get a rule 21 / rule 22 judgment set aside, making such an application for an extension of time is all that needs to be done. There is no need to apply for reconsideration of a rule 21 / rule 22 judgment and in most cases that is not the best thing to do. (This is reflected in a standard document that is now sent out in England & Wales – or at least is supposed to be sent out – with every rule 21 / rule 22 judgment). The Respondent has recently made an application for an extension of time, and it will be dealt with in due course.

Employment Judge Camp

24 January 2025