EMPLOYMENT TRIBUNALS

Claimant: **Mr S Whitston**

Respondent: **La Planta Ltd**

JUDGMENT

The Respondent's application dated **21 June 2025** for reconsideration of the judgment sent to the parties on **21 March 2025** is refused.

REASONS

1. On 14 August 2024, the Claimant issued a claim of breach of contract, failure to pay accrued but untaken annual leave and unauthorised deduction from wages against the Respondent. This followed a period of Early Conciliation from 30 July 2024 to 14 August 2024.

2. On 16 August 2024, the claim was served on the Respondent at the address given on the ET1 claim form, which was 100 Ditchling Road, Brighton BN1 4SG. At the same time, the case was listed for hearing on 30 January 2025.

3. No response was received from the Respondent. On 19 November 2024, the Legal Officer wrote to the parties to explain that no response had been received, but it was not appropriate to issue a judgment as further information was received, so the case remained listed. That letter was copied to the Respondent at the same address (100 Ditchling Road).

4. The Claimant applied for the hearing to be postponed for medical reasons. That postponement was granted by EJ Fowell. The hearing was relisted to take place on 21 February 2025. The letter informing the parties of the new hearing date was sent to the Respondent at the same address (100 Ditchling Road).

5. I conducted the hearing on 21 February 2025. There was no attendance from or representation on behalf of the Respondent. Having heard evidence and submissions from the Claimant, I gave oral judgment with reasons. My written judgment was sent to the parties on 21 March 2025. It was sent to the Respondent at the same address (100 Ditchling Road).

6. On 21 June 2025, Adam Smith, Director of the Respondent, emailed an urgent application to the High Court to stay enforcement of a Writ of Control obtained against the Respondent by the Claimant, and also to set aside my Judgment. That email was copied to the Tribunal. Attached to the email was an application in form N244. The address given for the Respondent on the form N244 was 100 Ditchling Road, Brighton BN1 4SG.

7. The form N244 was endorsed by a statement of truth. It explained that Mr Smith "never received the paperwork" in respect of the Tribunal proceedings. He attributed this to "a breakdown in postal delivery or miscommunication". It further explained that the claim was disputed. It said this regarding the Respondent's substantive position:

> "Scott Whitston worked at the venue from 25 January 2024 to 22 July 2024.
>
> He was treated as a self-employed contractor (no contract found) and paid accordingly.
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> He raised a dispute over tips (approx. £140) which I was reviewing, but before it could be resolved, he refused to attend Sunday shifts—our busiest days.
>
> This caused loss of earnings over £7,000, wasted prep time, staff hours lost, and resulted in closure for two Sundays.
>
> His conduct left the business effectively held "to ransom" over an unclear claim."

8. I have treated the Respondent's application as an application for reconsideration of my judgment. This reconsideration judgment deals with that point only. I express no comment on the application in respect of the Writ of Control, which is outside the jurisdiction of this Tribunal.

9. Under Rule 68 of the Employment Tribunal Rules of Procedure, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.

10. Rule 69 provides that an application for reconsideration under Rule 68 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.

11. Rule 6 provides that, in the case of non-compliance with any rule, the Tribunal may take such action as it considers just, which may include waiving or varying the requirement.

12. The process by which the Tribunal considers an application for reconsideration is set out in Rule 70. Where the Judge considers that there

is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out a time limit for any response to the application by the other parties, and seeking the views of the parties on whether the application can be determined without a hearing.

13. The rules give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA. Paragraph 34 provides as follows:

> "34. […] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration."

14. The starting point is, of course, that the Respondent's application was not received within the time limit in Rule 69.

15. The Respondent's case is that Mr Smith had not received any correspondence from the Tribunal, up to and including my judgment. The postal address to which all correspondence from the Tribunal was sent was evidently the correct address, because it is the same address as Mr Smith used on the form N244. It is conceivable that a piece of correspondence may, on occasion, fail to be delivered due to some vagary of the postal system. It is also conceivable, although unlikely, that by unhappy coincidence two pieces of correspondence from the same sender over a period of some months may fail to be delivered in that way.

16. In this case, the Tribunal has sent the Respondent four pieces of correspondence in total, all to the same address. Three of those were sent before the hearing took place; the fourth was the judgment, which was sent following the hearing. In my judgement, it would stretch credulity far beyond breaking point to suggest that each of those pieces of correspondence went missing in the post. What I consider is considerably more likely is that the Notice of Claim and each of the subsequent pieces of correspondence were correctly delivered to the Respondent's address, and that the Respondent's process for handling postal deliveries was insufficiently robust to recognise the importance of letters from the Tribunal. There is no evidence within the application regarding the Respondent's post-handling processes.

17. In light of that, I conclude that it is not in the interests of justice to extend the time for the reconsideration application. So on that basis, the application fails and is dismissed.

18. Even if I had concluded that it was appropriate to extend time to substantively consider the reconsideration application, I would have reached the conclusion that there was no reasonable prospect of the Judgment or any part of it being varied or revoked, for the following reasons:

    a. For the reasons set out above, I have concluded that the proceedings were properly served on the Respondent's address, and that the Respondent ought to have been aware of them (if not from the original Notice of Claim, then from the Tribunal's subsequent correspondence). In the circumstances, it is not in the interests of justice to reopen the litigation to allow the Respondent to have a second (or, in reality, fourth) attempt at engaging with the proceedings.
    b. The only substantive argument the Respondent appears to advance that goes to the complaint of failure to pay accrued but untaken holiday pay is that the Claimant was not an employee, but rather was a self-employed contractor. That assertion is in direct contradiction to the contemporaneous correspondence put before the Tribunal by the Claimant prior to the hearing, in which Mr Smith referred to terminating the Claimant's "employment". In respect of the complaints of unauthorised deduction from wages and breach of contract, the Respondent also appears to advance an argument that there could be some sort of contractual offset or right to deduct for lost earnings said to be caused by the Claimant. But since the Respondent's own case is that there was no written contract with the Claimant, it is hard to see how that right would arise. So on the case the Respondent has put forward in the Form N244, there appears in any event to be no reasonable prospect of it succeeding.

Approved by:
Employment Judge Leith

Date: 30 June 2025

Judgment sent to the parties on
Date: 30 June 2025