EMPLOYMENT TRIBUNALS

Claimant: Mr Azzam Hakim

Respondents: Five Stars Clapham Ltd (R1)
La Rueda Clapham Ltd (R2)

Heard at: London South Employment Tribunal (Croydon) **On:** 09 October 2025

Case numbers: 2304480 / 2023 and 2301235 / 2025

RECONSIDERATION DECISION

Definitions

1. In this decision, the term "rule" or "rules" refers to a rule or rules in the Employment Tribunal Procedure Rules 2024.

Background

2. The joined cases of Mr Azzam Hakim (the claimant) against Five Stars Clapham Ltd (R1 under case number 2304480/2023) La Rueda Clapham Ltd (R2 under case number 2301235/2025) were heard by me on 09 October 2025. The case had been set down on that day for a final hearing.

3. On 09 October 2025 the claimant was represented by Mr Tufail Hussain of Godwin Austen solicitors. Both the claimant and his representative attended.

4. Neither R1 nor R2 attended.

5. The claimant had presented two claims, one on 18 August 2023 against R1 and another on 2 April 2024 against R2.

6. On the morning of the hearing at 07:45am the claimant's representative sent the Tribunal and R2 (both copied under cover of the same email) an application for strike-out of both R1 and R2's responses accompanied by a supporting bundle and a witness statement of the claimant.

7. When neither R1 nor R2 attended, I proceeded in their absence. I struck out the claimant's claim against R1 pursuant to rule 38(1)(a) of the Rules (no reasonable prospect of success) because R1 (having been dissolved) was no longer a legal entity. I acceded to the claimant's application to strike out R2's response to his claim against it and issued a judgment in default against R2 pursuant to rule 22(2).

8. I gave judgment in default orally on 09 October 2025 at 4:00pm after having heard the claimant on his strike-out application and remedy, and after having risen to consider.

9. My judgment in default made clear my finding that R1 and R2 were in fact substantively and identically one and the same entity and that the claimant's employment with R1 had transferred over to R2 via TUPE, with the obligations and liabilities or R1 transferring to R2 accordingly.

10. The written record of my oral judgment, without reasons in accordance with rule 60(3) and (4), was signed on 10 October 2025 and promulgated to the parties on 30 October 2025.

The application of R2 for a reconsideration

11. On 13 November 2025 R2 wrote to the Tribunal in the following terms:

"Dear Sirs,

We write on behalf of Respondent 2 in the aforementioned case to respectfully request a reconsideration of the judgment pursuant to the Employment Tribunal Rules of Procedure.

On the date of the hearing, we did not receive the required link or joining details to enable us to attend and defend the claim. As a result, the hearing proceeded in our absence, and judgment was subsequently entered against our client without their evidence or submissions being heard.

We submit that it is in the interests of justice for the Tribunal to reconsider the decision. The judgment was made in circumstances where neither we nor our client were given the opportunity to participate through no fault of our own. Had we

been able to attend, we would have presented a substantive defence that may have materially affected the outcome.

We therefore respectfully request that the judgment be reconsidered and that a fresh hearing be listed to allow all parties the opportunity to be heard."

The relevant Rules

12. The provisions about reconsideration are set out in Part 12 (rules 68 to 71) of the Rules.

13. Rule 69 governs the time limits for an application for reconsideration. It states as follows:

"69. Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—

(a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or

(b) the date that the written reasons were sent, if these were sent separately."

14. The general principle under rule 68(1) is as follows:

"68.—(1) The Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.

(2) A judgment under reconsideration may be confirmed, varied or revoked."

15. If follows that, in order for a Tribunal to reconsider a judgment at all, the initial hurdle that it must be *"necessary in the interests of justice to do so"* must be surmounted. If the Tribunal finds that it is not "necessary in the interests of justice to do so", a judgment will then not be "under reconsideration" within the meaning of rule 68(2). If a judgment is not "under reconsideration" for the purposes of rule 68(2) because the initial rule 68(1) hurdle was not cleared, the judgment may not then be confirmed, varied or revoked.

16. Rule 70 then provides as follows:

"70.—(1) The Tribunal must consider any application made under rule 69 (application for reconsideration).

(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where

substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.

(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.

(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.

(5) If the Tribunal determines the application without a hearing the parties must be given a further reasonable opportunity to make further written representations in respect of the application."

17. The requirement for the Tribunal to consider the application under rule 70(1) remains subject to the initial bar ("necessary in the interests of justice") in rule 68(1). When considering the application under rule 70(1) therefore, the first question for the Tribunal to consider is whether it is necessary in the interests of justice for the judgment to be reconsidered. If not, the application can go no further and therefore "refusal" under rule 70(2) is not engaged because the application cannot be entertained.

18. Only if it is necessary in the interests of justice for the judgment to be reconsidered will the process steps in rule 70(2) to (5) be required to be followed.

Consideration of R2's basis for the application

19. R2's application for a reconsideration is in time pursuant to rule 69(a).

20. R2's application rests on the following contentions:

    (a) R2 did not receive a link or joining instructions to enable it to join to defend the claim.

    (b) The hearing proceeded in R2's absence.

    (c) The judgment was entered against R2 without R2's evidence and submissions being heard.

    (d) It was not the fault of R2 that R2 was not given an opportunity to participate.

(e) Had R2 been able to participate, it would have presented a substantive defence that may have materially affected the outcome.

21. R2's contention at paragraph 20(a) (non-receipt of link or joining instructions to enable R2 to join):

The email chain from the claimant's representative to the Tribunal Office on the morning of 09 October 2025 shows that they first sent their strike-out application at 07:46, then followed it up by an email to the Tribunal Office at 07:52 saying that they had not received a video link for the hearing the same day. However, both the claimant and his representative were clearly sent the video link at some stage, whether on the day or previously, because they both joined on time for the start of the hearing on that day. My record of the oral judgment that I delivered on 09 October at 4pm in the afternoon recorded that *"the respondent has not answered and is not present today despite having been sent the notice of today's hearing and the link for video attendance"*. On the morning of 09 October 2025, I asked the clerk to make their best efforts to contact R2 via all of the contact details that she possessed. I did not proceed to hear the claimant's strike-out application until it was clear from the clerk that the respondent was not responding. Both the claimant and the respondent are routinely sent video link joining instructions ahead of hearings, and if they confirm that they have not received such a link they are routinely re-sent the link with instructions. Given that I know the clerk made their best efforts to contact R2 when R2 did not appear for the hearing at 09:45 on 09 October, I do not accept that R2 was not enabled to join the hearing. There is no record on 09 October 2025 from R2 (as there was for the claimant's representative) saying that R2 was not in receipt of the joining link, nor any news from R2 at all on that day in response to the clerk's sustained efforts to contact R2. The judgment was not delivered until 4:00pm on that day hence R2 had more than ample opportunity to contact the Tribunal on the same day if they did not have the means to join. There is no evidence that R2's inability to join was communicated at all to the Tribunal at any time, until the fourteenth day after the hearing, when R2's application for reconsideration was received by the Tribunal.

22. R2's contention at paragraph 20(d) above (not the fault of R2 that R2 was not given an opportunity to participate):

(a) I do not accept that it is *"not the fault of R2 that R2 was not given an opportunity to participate"*. This is for the reasons given above at paragraph 21. It is also because the claimant's application for a strike-out was premised on the background of *"failure to comply with case management orders, failure to present timely and valid Responses or at all, and failure to actively pursue or defend the claim"* (see numbered paragraph 1 of the claimant's strike-out application).The claimant's application was also that *"the Respondents' persistent non-engagement demonstrates a failure to actively pursue or defend the claims, in breach of the overriding objective (Rule 2)"* (see the penultimate paragraph of page 4 of the claimant's strike-out application). In my oral

judgment given on 09 October 2025 I made a decision, in clear terms, in relation to that background of non-compliance by R2, saying this:

"The history of the respondent's response to the claimant's second claim of 22 January 2025 is detailed above. The claimant's grounds for striking it out are in summary that the respondent:

- *Sent the response late after having sent it on the wrong form initially and in breach of tribunal orders has failed to make an application for extension of time;*
- *Has in all respects failed to comply with any case management orders to date;*
- *By the above has prejudiced the claimant's ability to prepare for the hearing, leaving the claimant without any knowledge of the defence or any evidence;*
- *That in light of all the above it would be contrary to the overriding objective to allow the respondent's response to be admitted.*

I agree with all of the claimant's points above as reasons for a strike out. The respondent has singularly failed to engage in this litigation at all in any sensible way."

(b) In light of the clear background of complete and utter non-compliance by R2 on which I ruled during my oral judgment, I cannot agree that in the wider context R2 was given no opportunity to participate meaningfully. The opportunity to engage meaningfully was provided to R2 throughout the life of the case and never taken up by R2. The failure to comply included not only a failure by R2 to comply with any case management directions at all at any stage, but also a failure to present any response at all to the claimant's first claim.

23. R2's contention at paragraph 20(b) above (the hearing proceeded in R2's absence):

It is true that the hearing proceeded in R2's absence on 09 October 2025. This was in accordance with rule 47 of the Rules which allows the Tribunal to do this after considering any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence. As mentioned above in paragraph 21, the Tribunal made such enquiries on 09 October 2025 and, in the absence of any good reason for R2's non-attendance and against the background explained at paragraph 22 above, proceeded under rule 47. It was in the Tribunal's opinion in accordance with the overriding objective to proceed under rule 47 on that day.

24. R2's contention at paragraph 20(c) above (judgment entered against R2 without R2's evidence and submissions being heard):

(a) It is true that judgment was entered against R2 without R2's evidence and submissions being heard. This was, on the submission of the claimant, in accordance with rule 38(1)(b), (c) and (d). By rule 38(3), where a response is struck out, the effect is as if no response has been presented as set out in rule 22. Therefore R2's assertion that it was denied the opportunity to lead evidence and make submissions as to the substantive elements of the claimant's second claim is misconceived. If it had been present it would have first had to respond to the strike-out application of the claimant before making any such substantive arguments. In view of its background of non-compliance detailed above, I cannot see that it could have had any realistic prospect of succeeding in resisting that strike-out application.

(b) The claimant's strike-out application was accompanied by a full bundle and a supporting witness statement specifically in relation to that application, thereby enabling the Tribunal to consider the application in detail and in full context. It is true that R2 did not make any submissions or present any evidence in relation to the strike-out application itself, because it was not present. However, the claimant had served its strike-out application on R2 some 3.5 hours before the hearing was due to start, and indeed during the whole of that day R2 provided no response. R2 had the opportunity to either respond to the claimant's strike-out application, or alternatively to make submissions to the Tribunal that it had insufficient time to make such responses and to argue for an adjournment. In the context of the history of complete non-compliance with the litigation by R2 as described in paragraph 22 above, the Tribunal was entitled to proceed without R2's evidence and submissions in relation to the strike-out application.

25. R2's contention at paragraph 20(e) above (R2 if able to participate would have presented a substantive defence that may have materially affected the outcome):

(a) This is misconceived for the same reason as in paragraph 24(a) above. The hearing on 09 October 2025 and the ensuing judgment was based on a strike-out application resting on procedural grounds, and in that respect any substantive defence to the claim would have been irrelevant because the judgment was a judgment in default.

(b) In any event, even if the claimant's strike-out application had been dealt with as a preliminary matter with R2 being present on 09 October 2025, with the case proceeding to a full hearing on successful resistance of the application by R2, my judgment now, as it was then, is that there still would have been no reasonable prospect of R2 successfully defending the claimant's substantive claim. Therefore, there is no reasonable prospect that the outcome would have been materially affected. This is for the reasons that I expressly gave in my oral judgment when I said as follows:

"The response that it [R2] submitted was that the claimant did not work for it at all. In light of my reasoning about TUPE above, that defence has no reasonable

prospect of success. It appears to me that the defence advanced by the respondent in its late form ET3 is a deliberate attempt to obfuscate. If on the other hand it would be that the respondent's defence would be that the claimant did not work for La Rueda Clapham' Ltd's predecessor at all, that clearly has no prospect of success on the evidence produced by the claimant. Therefore, on the basis of rules 38(1)(a), (b), (c) and (d) taken together I strike out the respondent's response on the basis that it has little prospect of success, the respondent's conduct of the proceedings has been unreasonable and not actively pursued, and the respondent has wholly failed to comply with any directions of the tribunal" and

Rule 22 says that the Tribunal must decide on the material available whether a determination can be made of the claim and if so must issue judgment accordingly.

My decision is that the claimant's second claim of 22 January 2025 can be decided on the material available to me today, in default of a response from the respondent. This is because it is clear to me on the face of the evidence thus far provided that the claimant did work for the respondent when it was Five Stars Clapham Ltd, that there was a TUPE transfer to La Rueda Clapham Ltd, that the claimant was working under a verbal contract between 07 June 2023 and 01 July 2023 at 45 hours per week on a wage of £14 per hour, and that he was paid nothing for that work."

Application of the Rules to R2's basis for the reconsideration application

26. Applying my reasoning above about R2's contentions advanced in support of its application for a reconsideration to the rules quoted above, my decision is that:

(a) It is not *"necessary in the interests of justice"* in the meaning of rule 68(1) to reconsider my judgment signed on 10 October 2025 and promulgated to the parties on 30 October 2025.

(b) This is because:

(i) I am not satisfied that R2's fundamental basis for the application (i.e. that R2 did not receive the joining link on the day of the hearing and that their lack of participation was through no fault of their own) is made out.

In addition, and in any event,

(ii) I can find no evidence, or other reason to indicate, that R2 would have had any grounds giving it a reasonable prospect of resisting the claimant's strike-out application even if it had attended on 09 October 2025.

(iii) Even if R2 had attended on 09 October and had successfully resisted the claimant's strike-out application, on its own formulation of its grounds of resistance its response would in any event have had no reasonable prospect of success on substantive argument. Given this, it is not "necessary and in the interests of justice" to consume more court time and expense in re-hearing the case.

(c) Rules 68(2) and (3) are not engaged because the standard in rule 68(1) is not satisfied.

(d) Rule 70(1) is engaged to the extent that the Tribunal must consider rule 68(1) in considering R2's application. But the finding above for rule 68(1) remains.

(e) Rules 70(2) to (5) are not engaged because the standard in rule 68(1) is not satisfied. However, even if that standard had been satisfied, I would have been obliged to refuse R2's application because in accordance with rule 70(2) there would have been no reasonable prospect of the judgment being varied or revoked for the reason given at paragraph 26(b)(iii) above.

27. For the reasons above, R2's application for a reconsideration fails.

M Da Costa

Employment Judge M Da Costa
21 December 2025
Judgment sent to the parties on:
13th January 2026
For the Tribunal:
O.Miranda