Neutral Citation Number: [2026] EAT 45

Case No: EA-2024-001030-AS
EA-2024-001031-AS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 5th March 2026

Before:

ANDREW HOCHHAUSER KC
DEPUTY JUDGE OF THE HIGH COURT

- -

Between:

HYPERVOLT LIMITED

Appellant

- and -

MR S JACKSON

Respondent

- -
- -

Mr R Smith (Instructed by Peninsula Business Services Ltd) for the **Appellant**
The Respondent appeared as **Litigant in Person**

Hearing date: 5th March 2026

- -

JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE

There is a mandatory requirement pursuant to rule 72(1) of the Employment Tribunal Rules 2013 (the "ET Rules") for an employment judge to determine whether there are reasonable prospects of a judgment being varied or revoked before seeking the other party's response and the views of the parties as to whether the matter can be determined without a hearing, potentially giving any provisional view, and deciding how the reconsideration application will be determined for the purposes of rule 72(2).

The Appellant appealed against the refusal of the Employment Tribunal (the "ET") to extend time to submit a response and for reconsideration of a decision issued on 6 March 2024 under Rule 21 of the ET Rules.
The employment judge erred in law in failing properly to consider the entirety of the Appellant's applications, to give adequate reasons for rejecting the applications and properly to apply the process required by Rule 72.

The EAT remitted the case to the ET.

ANDREW HOCHHAUSER KC, DEPUTY JUDGE OF THE HIGH COURT:

1. This is an appeal by Hypervolt Limited ("Hypervolt"), the appellant, against the decision of Regional Employment Judge ("REJ") Burgher on 2 July 2024 in the East London Employment Tribunal (the "ET") when he refused an application made on 25 April 2024, and renewed on 12 June 2024, for an extension of time to present a response and for reconsideration of the decision to issue, on 6 March 2024, a judgment by Employment Judge Overton under rule 21 of the Employment Tribunal's Rules of Procedure 2013 (the ET Rules) in a claim brought by Mr Stuart Jackson, case number 3202091/2023, and a consequential decision of 3 July 2024 to hold a remedy hearing.

2. Hypervolt was represented by Mr Smith of Peninsula Business Services Ltd and Mr Jackson appeared in person. I am grateful to both of them for their helpful written and oral submissions.

3. The rule 21 judgment stated that:

> "1. The claim was issued in the East London Employment Tribunals on 5 March 2023. The respondent has failed to present a' valid response on time. The Employment Judge has decided that a determination can properly be made of the claim, or part of it, in accordance with rule 21 of the Rules of Procedure.
>
> 2. The respondent has made unauthorized deductions from the claimant's wages and must pay the claimant £2,000 gross.
>
> 3. The claimant was unfairly dismissed and the remedy to which the claimant is entitled will be determined at a remedy hearing."

4. The application for reconsideration was rejected on the basis that:

> "The application for reconsideration of rule 21 judgment is presented out of lime time and it is not considered to be the in interests of justice to extend time."

It did not specifically address the application renewed to extend time to present a response.

5. By two Notices of Appeal, dated 13 August 2024, Hypervolt raised four grounds of appeal.

> "1. The ET erred in law in that by refusing the application for reconsideration it took into account only one factor, the timing of the application, without giving due regard to the appellant's contention that it had not initially received notice

of the claim and that it had requested a copy of the Claim Form. Although the ET Rules create a presumption that post has been delivered, the ET ought to have ensured that the parties were on an equal footing in keeping with the overriding objective and to avoid the unfairness of the appellant being debarred from defending the claim by affording the appellant and opportunity to rebut that presumption and to have its application considered whether by further consideration on the papers or at a hearing. The appellant was denied the bare minimum of due process to ensure a fair hearing.

2. The ET erred in failing to address the entirety of the application before it. The ET's rejection of the application does not indicate that it considered the entirety of the application before it. The ET simply rejected the application on the basis that it was out of time, without consideration either of the two-stage reconsideration process required by rule 71 and/or any of the factors necessary for granting an extension of time, including here the prejudice of not knowing the claims that the appellant had to meet or the possible merits of the defence; and the appellant in a position of not being able to properly respond to a claim, despite having offered a deadline to provide a response, which would not have materially prejudiced the tribunal or the claimant.

3. The ET erred in law in that its reasons for refusing the applications before it were:

(i) so brief as to not be 'Meek compliant'; and

(ii) were in breach of rule 64.2 of the ET Rules of Procedure 2013 as impermissibly short even though this was not a judgment.

4. In reliance on any or all of above grounds, the ET accordingly erred in law on 3 July 2024 in listing a remedy hearing to determine the question of remedy."

6. The Notice of Appeal was considered by His Honour Judge Beard on 23 November 2024 and he permitted the appeal to go forward on all ground, stating: "I consider it arguable that the ET failed properly to consider the application for an extension of time. It is further arguable that, in the absence of an oral hearing, the respondent's contention that they had not received the ET1 could not be properly rejected."

CHRONOLOGY

7. The relevant chronology is as follows:

1. The Claim was issued on 12 November 2023.

2. On about 13 December 2024, Hypervolt moved from its premises at WeWork, 30 Churchill Place, Canary Wharf London E14 5RB to Level 10, 1 Canada Place, Canary Wharf, London E14 5AB.

3. Hypervolt was served with the notice of claim on 19 December 2023 at their old address.

4. The deadline for serving an ET3 was 16 January 2024.

5. On 20 February 2024, the ET wrote to Hypervolt at both its old and new addresses, informing them that no response had been received and indicating that they could apply to defend their claim out of time with a copy of a draft ET3.

6. Rule 21 judgment was issued on 6 March 2024. As stated above, it awarded Mr Jackson £2,000 as compensation for an unauthorized deduction. That sum has never been paid.

7. The decision was published on the ET website on 3 April 2024. It is not clear when this first claim came to Peninsula's attention or when they first approached Hypervolt offering to represent them in these proceedings.

8. Peninsula had its first meeting with Hypervolt on 17 April 2024. It is not clear why it took to so long for that meeting to take place.

9. The application for an extension was made on 25 April 2024. It is unclear why it took eight days for the application to be made. It was made on the basis

that Hypervolt had never received the papers. No draft response was filed with the application. The application contained a request for the ET1. I was informed by Mr Smith that it was not supplied. Peninsula did not chase this up with the ET nor did they contact Mr Jackson to obtain a copy.

10. On 6 June 2024, a follow-up meeting took place with Mr Alexandru, CEO of Hypervolt and a representative of Peninsula attending Hypervolt' s premises. Apparently, the delay was due to the fact that from 17 April until 6 June 2024 Mr Alexandru was away on a business trip in the United States.

11. Following that meeting, later the same day, 6 June 2024, claim and the ET1 were discovered by Hypervolt in its new premises. I was not told how this came about and why it was only discovered at this time.

12. This led to a further application on 12 June 2024. Again, it is unclear why it took six days to make this application. I am going to read it in its entirety. After setting out the tribunal name and case number, it said as follows:

> "This is in addition to the application already submitted on 25 April 2024.
>
> APPLICATION UNDER RULE 20 FOR EXTENSION OF TIME FOR PRESENTING A RESPONSE
>
> and consequent set aside under rule 20(4) of default judgment issued on 6 March 2024 or reconsideration under rule 70, if deemed necessary by the Employment Judge.
>
> The reason for the delay
>
> The Respondent received a call from Peninsula Business Services regarding the default judgment that had been published on 6 March 2024. At the time, the person who spoke on the phone with the Peninsula representative said that they had not heard about this claim before. Subsequently, after a visit from the legal representative to the client's offices on 5 June 2024, the tribunal papers were discovered. As soon as the claim was brought to the legal representative's attention, a response was drafted and approved by the respondent and is now accompanying the application. In justification of the

> delay in finding these papers and presenting them to the legal representative, the respondent would like to present the following facts;
>
> - the Respondent's co-founder was dismissed as a result of the facts related to these proceedings which meant that the respondent's current CEO was left with the sole and unprecedented level of responsibility.
>
> - the Respondent is a start-up and Mr Alexandru was primarily engaged with fund raising in order to ensure the viability of the business.
>
> - Unfortunately, from the time that" – [I think the word "Peninsula" is missing] -- "were instructed in April 2024 until the date of the client visit in June 2024, Mr Alexandru was away on a business trip in the United States, making it very difficult to communicate or to hold a meeting because of the time difference.
>
> Additionally, the Respondent would like to note that there is a typo in the rule 21 judgment which says that the claim was lodged in March 2023. The respondent submits that this is impossible given that the main facts of the complaint (including the claimant's dismissal) happened in June 2023. The claim form is dated 12 November 2023 and the notice of claim is dated 19 December 2023, with a deadline to respond being 16 January 2024. This means that the respondent is five months late in submitting this response instead of 1 year as the default judgment would make it seem like.
>
> In all of above circumstances, it is in the interests of justice to reconsider this matter and allow a late response. The respondent requests a hearing for this application if the tribunal concludes it is necessary to determine this application.

Why the extension is sought?

> In compliance with rule 20(1), we enclose a draft ET3 response. The extension of time it sought because:
>
> (1) the Respondent has an arguable defence to the claims presented and the interests of justice require this to be heard;
>
> (2) the claimant will otherwise receive an unjustified windfall of compensation in that liability is contested.
>
> This application is copied to the claimant in accordance with rules 20, 71 and 92. Until under rule 20(2), the claimant has seven days to give reasons in writing for opposing the application."

13. On 2 July 2024, REJ Burgher refused the application. As stated above he said: "The application for reconsideration of the rule 21 judgment is presented out of time and it is not considered to be in the interests of justice to extend time."

14. On 3 July, he ordered that the ET list a remedy hearing to take place on 27 September 2024. To date, that hearing has not taken place.

15. On 13 August 2024, these appeals were lodged against the orders of 2 and 3 July.

16. On 25 November 2024, HHJ Beard allowed the appeal to proceed on all grounds.

17. On 23 December 2024, the deadline for the Applicant, Mr Jackson, to present his Answer to the appeal was due. That was not done in time.

18. On 24 February 2025, Mr Jackson submitted an application for the extension of time to serve the Answer to the appeal on the grounds that he had been severely ill with Covid.

19. On 7 April 2025, Mr Jackson's application for the extension of time was granted.

THE GROUNDS OF APPEAL

Ground 1

8. This first ground is predicated on the fact that Hypervolt never received the papers. As a matter of fact, this is incorrect. As stated above, by 12 June 2024 it will become apparent that it had. Mr Smith, therefore, indicated at the hearing that he no longer relied upon this ground and it was withdrawn.

Ground 2

9. The rejection of the application did not indicate that the ET had considered the entirety of the application before it. There were two grounds that were raised by Hypervolt: a reconsideration of the

rule 21 decision and an application under rule 20 for an extension of time for presenting a response. Mr Smith relied upon the decision of **T W White & Sons Ltd v White** [2021] 3 WLUK 500. At [48] and [49] of his judgment, HHJ Tayler said as follows:

> "*Reconsideration*
>
> 48. Specific provision of reconsideration is made by rules 70 to 73 of the ET Rules 2013:
>
> *'RECONSIDERATION OF JUDGMENTS*
>
> **Principles**
>
> **70.** A 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. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.
>
> **Application**
>
> **71.** Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.
>
> **Process**
>
> **72.** (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise, the Tribunal shall send a notice to the parties setting 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. The notice may set out the Judge's provisional views on the application.
>
> (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.
>
> (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be,

> chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.
>
> **Reconsideration by the Tribunal on its own initiative**
>
> **73.** Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).'
>
> 49. The rules set out a structured, and mandatory process for the consideration of applications for reconsideration:
>
> > (1) the employment judge must first consider whether there are 'no reasonable prospect of original decision being varied or revoked', in which case the application is to be dismissed ('The rule 72(1) decision')";
> >
> > (2) where practicable, the consideration under paragraph (1) shall be by the employment judge who made the original decision or, as the case may be, chaired the full tribunal which made I had it;
> >
> > (3) otherwise, the Tribunal shall send a notice to the parties setting 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;
> >
> > (4) the employment judge may choose to express a provisional view;
> >
> > (5) a hearing will be fixed unless the employment judge considers having regard to any response to the above enquiry that 'a hearing is not necessary in the interests of justice';
> >
> > (6) any reconsideration determination under rule 72(2) ET Rule 2013 ('the rule 72(2) decision') shall be made by the judge or, as the case may be, the full tribunal, which made the original decision."

10. Mr Smith submitted that the judge must first consider whether there are "no reasonable prospects of original decision being varied or revoked." However, here, the ET refused the reconsideration application, only taking into account the timing of the application. The ET failed to take into account the mandatory first stage of the reconsideration test as it did not consider whether the application had no reasonable prospect of success or not.

11. In oral submissions he developed this further by stating that the REJ failed to refer to or address the various points made in his application letter dated 12 June 2024, to which I have referred above. Furthermore, he submitted REJ Burgher failed to give full consideration to the second stage by only taking into account the timing of the application.

12. Mr Smith also replied upon the decision of Mummery J sitting with two members in **Kwik Save Stores v Swain & Others** 1997 ICR 49. In that case guidance was given as to how the judicial discretion in respect of whether or not to extend time should be exercised. I cite the following passage:

> "The process of exercising the discretion involves taking into account all relevant factors, weighing and balancing them one against the other, and reaching a conclusion which is objectively justified on the grounds of reason and justice. An important part of exercising this discretion is to ask these questions. What prejudice will the applicant for an extension of time suffer if the extension is refused? What prejudice will the other party suffer if the extension is granted? If the likely prejudice to the applicant for an extension outweighs the likely prejudice to the other party, then that is a factor in favour in granting the extension of time but it is not always decisive."

13. In his direction on 2 July 2024, REJ Burgher simply considered the timing of the application. Mr Smith submitted that the ET, therefore, erred in law in not taking into account all of relevant factors necessary for granting an extension of time as set out in the original application dated 25 April 2024 and the further letter of 12 June 2024.

Mr Jackson's submissions.

14. In addition to the helpful written submissions which I will not set out at length here, in essence Mr Jackson submitted that had it was very clear that the REJ was a very experienced judge and that he considered all the matters raised on behalf of Hypervolt and the decision was one that he was entitled to reach. Hypervolt had declined to participate in the proceedings, had delayed unjustifiably and, therefore, caused him substantial prejudice and distress.

DISCUSSION AND CONCLUSION

15. On the face of the extremely short decision dismissing the application, I have reached the conclusion that it is not clear that the REJ had properly considered all the matters raised on behalf of Hypervolt in accordance with the **Kwik Save case** or applied the approach laid down by HHJ Tayler in the **White decision**. It may well be that he had, but that is not apparent on the face of the decision. The statement that it was not in the interests of justice to extend time is a conclusion, with no underlying reasons being given for that conclusion. I, therefore, allow this ground of appeal.

Ground 3

16. This ground raises similar considerations on the basis that it was not what has been described as "Meek" compliant. This refers to the case of **Meek v City of Birmingham District Council** [1987] IRLR 250. There, the Court of Appeal considered the obligation of an employment tribunal (then an industrial tribunal) to give reasons for its decision. Bingham LJ (as he then was) giving the judgment of the court at [8] said as follows:

> "It has on a number of occasions been made plain that the decision of an Industrial Tribunal is not required to be an elaborate formalistic product of refined legal draftsmanship, but it must contain an outline of the story that has given rise to the complaint and a summary of the Tribunal's basic factual conclusions and a statements of the reasons that have led them to reach the conclusions that has they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be a sufficient account of the facts of the reasoning to enable the EAT or, on further appeal, this court to see whether any question of law arises; and it is highly desirable that the decision of an industrial tribunal should give guidance both to employers and trade unions as to practices which should or should not be adopted."

17. The question of what standard must be met by the reasons for refusal of consideration was considered in **Modha v Babcocks Airport Ltd** UKEAT/0060/19, a decision of Elisabeth Laing J (as she then was). In that judgment, at [52], she indicated "...the refusal of the application for reconsideration was a judgment..." Rule 62 of the ET Regulations 2013 therefore applies. That provides:

> "(5) In the case of a judgment the reasons shall identify the issues which the Tribunal has determined, state the findings of fact in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues."

I need not add the final part which has no application here.

18. Alternatively, Mr Smith submitted that under rule 62(4) of the Employment Tribunal's Regulations 2013: "The reasons given for any decision shall be proportionate to the significance of the issue and for decisions other than judgments may be very short." This applied even where there was not a "judgment".

19. Mr Smith submitted that the Meek principle meant that the essential requirement for any given decision should be sufficient to enable the reader to understand why that decision has been taken and what is the basis on which he has lost. Where a reconsideration application is refused on preliminary consideration, the reasons need to convey why the judge has formed the view that he has that there is "no reasonable prospect" of that application leading to the decision in question being changed. He, therefore, submitted that it followed that the REJ's decision did not address the reasonable prospects test or the point that had been raised; it was, therefore, not "Meek" compliant; that this applied even if the reconsideration was not considered to be a judgment. They were not proportionate to address the significance of the issues that had been raised.

20. Mr Jackson submitted that the decision did not need to be long, and set out that it was not in the interests of justice to grant an extension and that nothing further was needed. It was a perfectly reasonable decision that the REJ was entitled to reach.

DISCUSSION AND CONCLUSION

21. I have reached the conclusion, based upon my earlier reasoning in relation to ground 2, that there is insufficient reasoning in the decision and the points raised by Peninsula should have been addressed. I, therefore, also allow this ground of appeal.

Ground 4

22. It follows from my conclusions above that ground 4 must also be allowed, at least until the application has been reconsidered.

REMEDY

23. In his skeleton argument, Mr Smith submitted that the matter should be remitted to a different employment judge to be reconsidered. I disagree. Indeed, in the course of the hearing, he accepted that there was no reason why this matter should not go back to the REJ Burgher.

24. I, therefore, order that this matter be remitted to REJ Burghter to reconsider Hypervolt's applications and for him to set out his reasons and findings in relation to the matters raised in accordance with the relevant ET Rules of Procedure and the authorities referred to above. I make clear it is not simply a request for him to expand his earlier decision, but for him to reconsider the matter afresh.

25. That concludes this judgment.