# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L Quine
**Respondent:** Tiger North Ltd

# JUDGMENT

The claimant's application dated 16 November 2017 for reconsideration of the judgment sent to the parties on 26 April 2017 is refused. It is made outside the applicable time limit and I decline to grant an extension of time under Rule 5.

# REASONS

## Background

1. The claim form was presented on 31 August 2016. The form identified Mr Panton of Artesian Law in London as the claimant's representative. The box indicating how the representative wished to be contacted was not completed. Correspondence with Mr Panton was therefore conducted by letter, although some letters were also sent by email in response to incoming emails. Mr Panton represented the claimant at a telephone preliminary hearing before Employment Judge Porter on 6 January 2017.

2. On 10 February 2017 he emailed the Tribunal and included as his email signature the postal address of Youngs Solicitors in Sheffield. The Tribunal changed its records and used that address as his address for correspondence. A letter of 23 February 2017 using that address was also emailed to Mr Panton, and he responded by email on 13 March 2017 without seeking to correct the correspondence address. Nor did he ask for communications to be by email rather than by letter.

3. On 20 March 2017 at a preliminary hearing in Manchester I heard an application by the respondent for an order striking out the complaints pursued by the claimant in these proceedings, or in the alternative for an order requiring her to pay a deposit as a condition of pursuing them. The respondent was represented by Counsel. Neither the claimant nor Mr Panton attended, but by email in the early hours of that day Mr Panton had submitted written representations for consideration. His email said:

> **"…[the claimant] is unable to attend the hearing. Further and as noted in the application, she does not have the resources to secure legal representation at the PHR. However as per the correspondence from the Tribunal to the parties and dated 14th March 2017, we attach written representation sent on her behalf. We confirm that the Respondent's representative has been copied into this email."**

4. I gave oral judgment with reasons at the conclusion of the hearing, and then engaged in case management.

5. Subsequently on 24 March 2017 the Tribunal promulgated the following written documents which I had signed:

5.1 Judgment and reasons striking out four complaints;

5.2 A deposit order with grounds requiring up to £1,000 to be paid if one or more of the four remaining complaints were to be pursued, and

5.3 A case management order effective if the deposit were to be paid, giving directions and confirming that the final hearing remained listed for 13-15 June 2017.

6 Those documents were sent by post to the respondent and to Mr Panton at Youngs Solicitors using the address on the Tribunal file.

7. No deposit was paid. On 24 April 2017 I signed a judgment striking out the claim. That judgment was promulgated by post on 26 April 2017. The Tribunal staff also issued a copy to both representatives by email the same day. The covering letter made clear that time for seeking a reconsideration was 14 days (i.e. by 10 May 2017).

8. On 27 April 2017 the respondent's solicitor made an application for costs. It was copied to Mr Panton by email.

9. On 3 May 2017 Mr Panton emailed the Tribunal and the respondent. His email bore the Youngs Solicitors postal address in its signature. It said that the costs application would be resisted, and that

> **"a robust appeal/review application will be submitted within the allocated timeframe concerning the Order of the Tribunal. The appeal when submitted will make it clear that neither the Claimant or her representatives were provided with the written judgment of the 24th March 2017. To date this remains the case. We anticipate that the Tribunal will be required to rescind the judgment upon the Claimant formally making her application."**

10. That email was sent a week before the expiry of the 14 days for the claimant to seek reconsideration of the judgment sent to the parties on 26 April 2017. I expected to receive an application for reconsideration in the interests of justice based on the assertion that the deposit order had never been received. If that assertion had been made out, it would have been very likely that the judgment would have been revoked and time for payment of the deposit extended to enable the claimant to pay it if she chose. It would not have been in the interests of justice to have struck out the case if the deposit order had gone

astray in the post.

11. The deadline passed. No application for reconsideration was made. By letter of 18 May 2017 the parties were notified that the costs application would be heard on 4 July 2017.

12. On 5 June 2017 Mr Panton contacted the Tribunal by telephone and by email asking for copies of the claim and response forms and the judgment promulgated on 26 April 2017. Copies were supplied by email the same day.

13. On 6 June 2017 the Employment Appeal Tribunal ("EAT") received Notice of Appeal against the judgment promulgated on 26 April 2017. The Notice gave Mr Panton's address as Youngs Solicitors. It asserted that the claimant had received no notification of the outcome of the preliminary hearing on 20 March 2017.

14. The Notice of Appeal also claimed in paragraph 7(b) that Mr Panton had ceased to be on the record as the claimant's representative prior to that hearing.

15. The costs hearing was postponed to await the outcome of the appeal.

16. On 30 October 2017 the EAT sealed an Order by HHJ Martyn Barklem sitting in chambers staying the appeal to enable the claimant to make an application for reconsideration of the judgment of 26 April 2017.

**Application for Reconsideration**

17. The application for reconsideration was made by email from Mr Panton at Youngs Solicitors of 16 November 2017. In summary the application made the following points:

17.1 The claimant had not received notification of the outcome of the hearing on 20 March 2017, and nor had Mr Panton;

17.2 Mr Panton had come off the record as her representative before that hearing, and (implicitly) the Tribunal should have been corresponding with the claimant direct rather than her representative.

18. The respondent submitted comments on 23 November 2017. It opposed the application. It said the application was well out of time. Mr Panton had always been on record as the claimant's representative. The three documents recording the outcome of the preliminary hearing on 20 March 2017 (see paragraph 5 above) had been sent out by the Tribunal and received by the respondent on 27 March 2017. If Mr Panton had failed to tell his client of the deadline for the deposit to be paid that was a matter between him and his client.

19. On 27 November 2017 I caused a letter to be sent to Mr Panton inviting the claimant to make further submissions by 5 December 2017 on the time limit issue. I reminded him of the email of 3 May 2017 which made reference to the timeframe for a reconsideration whilst that time limit was still running.

20. Mr Panton responded a day late, on 6 December 2017. He said the claimant had not sought reconsideration within time because she had decided to appeal instead, a decision "heavily linked to the Claimant's available resources at the material time". Given the appeal, the Tribunal should allow the reconsideration application.

21. The respondent commented the same day on the that email. It said that the application had no merit. It should be rejected on preliminary consideration. The claimant now lives in Saudi Arabia (where her husband works) and had not attended the hearing on 20 March 2017. It was unlikely she would attend any reconsideration hearing.

## Rules of Procedure 2013

22. Rule 71 requires an application for reconsideration to be made within 14 days of the date on which the judgment is sent to the parties. That time limit can be extended under Rule 5. The power to grant an extension, in common with all powers granted by the rules, must be exercised in accordance with the overriding objective in Rule 2, namely to deal with cases fairly and justly. This includes avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

## Conclusion

23. The claimant has not established that it would be in accordance with the overriding objective to extend time to enable this reconsideration application to be considered on its merits.

24. The assertion that Mr Panton ceased to be on the record as her representative, and that the deposit order should have been sent to the claimant direct, is untenable. It is not in accordance with the Employment Tribunal's records. The email on the morning of the hearing (see paragraph 3 above) had indicated only that the claimant did not have the resources to secure legal representation at that hearing. At no stage was the Tribunal asked to correspond with the claimant direct rather than with Mr Panton. It continued to correspond with him after the hearing without any objection.

25. Consequently, I am satisfied that the Tribunal staff quite properly sent all three of the documents recording the hearing to Mr Panton at the postal address repeatedly provided by his emails. There was no breach of Rule 39(3).

26. Of course, I do not rule out the possibility that they went astray and reached the respondent but not Mr Panton. If that were the case, however, one would have expected a simple application for reconsideration within 14 days of the strike out judgment. Mr Panton by his email of 3 May 2017 promised such an application. He had a week to submit it. It never materialised. I do not understand the contention that resources drove the claimant to appeal instead. The work in preparing a Notice of Appeal must outweigh the cost of a simple email to the Tribunal seeking reconsideration of the judgment.

27. I have taken into account that refusing this application will result in further work for the EAT. Even so, I must act in accordance with the overriding objective and deal with the application as and when it is made.

28. Further, I am conscious that there might have been a mishap here if the deposit order and accompanying documents genuinely went astray. However, the route to put that right was obvious and was open to the claimant for at least a week after her representative first became aware of the issue. There is an expectation that a professionally represented party will comply with time limits set out in the rules unless there is good reason.

29. Finally, I am troubled by the false assertion that Mr Panton came off the record as representative for the claimant prior to the hearing on 20 March 2017. As the representative on the record, it was his responsibility to tell the claimant personally of the deposit order, not the Tribunal's responsibility. That looks like an attempt to shift blame and it makes me suspicious of the assertion that the deposit order never reached him.

30. Putting these matters together I decline to extend time. The application for reconsideration could and should have been made within time. There are no grounds for an extension. The application is refused.

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Employment Judge Franey

8 December 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

11 December 2017

FOR THE TRIBUNAL OFFICE