



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. D. Owens

**Respondent:** S V Driver Solutions Limited

**Heard at: Bristol**

**On: 19<sup>th</sup> October 2018**

**Before:** Employment Judge R. Harper

**Representation**

Claimant: Mr. D. Owens

Respondent: Mr. D. Venn

## **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

**The Judgment of the Tribunal is that the Respondent's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.**

### **REASONS**

1. The Respondent has been deemed to have applied for a reconsideration of the Rule 21 Judgment dated 7<sup>th</sup> February 2018 which was sent to the parties on 7<sup>th</sup> February 2018 ("the Judgment"). I have been authorised under Rule 72(3) by REJ Pirani to conduct this reconsideration of EJ Mulvaney's Judgment.

The grounds are set out in its letter dated 22<sup>nd</sup> February 2018 when it applied to set aside Judgment. On 8<sup>th</sup> May 2018 the respondent returned a blank ET3. On 18<sup>th</sup> May 2018 the Respondent filed a draft ET3. It is significant to note that the Judgment is for a total of £ £1843.20 but the respondent in its draft ET3 agrees that the claimant is owed a substantial

proportion of that amount namely £ 1316.34 but the respondent has still not paid that.

2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was not received within the relevant time limit. I see no reason to extend that as no compelling reasons are advanced for the failure to comply with that limit. That alone would deal with the reconsideration application. The remainder of these reasons are the alternative position had I extended the time limit for making the application.
3. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired.
4. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
5. The grounds relied upon by the Respondent are these:

5.1 That the respondent was unaware of the claim until it received the Judgment. This has already been considered by EJ Mulvaney on 28<sup>th</sup> March 2018 although that was technically an application to set aside. The reality is that this is now an application for a reconsideration of the original Judgment. The problem for the respondent is that a check of the Companies House website reveals that the claim, which was issued on 6<sup>th</sup> December 2017, was served on the correct registered office of the respondent in Chester and the respondent had until 5<sup>th</sup> January 2018 to file the ET3 but failed to do so. The papers were not returned to the tribunal by the Post Office. Mr. Venn agrees that the papers were validly served on the Chester address but that unfortunately he moved his private address and did not tell the accountants in Chester. Upon returning to his old residential address to collect mail he then picked up the claim and the Judgment which had been sent there by the Chester accountants. The R21 Judgment was signed on January 19<sup>th</sup> 2018 and sent to the parties on 7<sup>th</sup> February 2018 at the registered office in Chester. In fact on 8<sup>th</sup> February 2018 the Respondent changed its registered office to an address in Cheddar.

5.2 Official documents, including an ET claim, are validly served by sending those documents to the registered office of a company. Where

those papers are not returned from that address this is deemed to be good service. It is incumbent upon the officers of the company to ensure that correspondence sent to the registered office is forwarded from that address to the relevant person within the company to deal with. Mr. Venn failed to notify the Chester accountants of his change of private address and he should have done so.

5.3 The papers were properly served and the Judgment properly entered and the situation has not changed since the matter was considered by EJ Mulvaney on 28<sup>th</sup> March 2018. The vast majority of the claim is admitted and payment had been withheld because the claimant had allegedly incurred expenditure prior to the cessation of employment by the company as a result of his alleged actions. However that is not a reason to withhold money due.

6. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

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Employment Judge R. Harper

Dated 19<sup>th</sup> October 2018