



# EMPLOYMENT TRIBUNALS

**Claimant**                      **Mr J Sambrook**  
**Respondent:**                 **Shahid Karim 247 Logistics Ltd**

## JUDGMENT

The Claimant's application received by the Tribunal on 10 April 2018 for reconsideration of the judgment sent to the parties on 4 April 2018 is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The email from the Respondent dated 10 November 2017 does not in fact indicate that the Respondent knew that, for an application for an extension of time, they were required to submit the request and a draft response together. The response was due on 2 November 2017. The Respondent's application for an extension of time is dated 10 November 2017, and seeks an extension of time to 24 November 2017. It should have had a draft response with it, but the Respondent did not have a representative at that point to draft it. There was no reply to that request by the Employment Tribunal until 2 December 2017, which referred the Respondent to rule 20. However, on 24 November 2017, the date to which they had requested an extension of time, the Respondent provided the response. For some reason, the response was not on the file when the Employment Judge signed the default judgment on 18 December 2017.
2. Thus, when Employment Judge Ord gave the direction on 2 December 2017 that he gave, he cannot have seen the response which had been submitted on 24 November 2017, because no reference is made to it and it appears to have been put on the file at a later date. Later, in the letter of 6 March 2018, Employment Judge Ord states that as things stood the response was rejected, but that the Respondent could make an application at the start of the hearing on 7 March 2018. This is what the Respondent did.

3. An employment tribunal's discretion to grant an extension of time for presenting a response under rule 20 is subject to the guidance of the EAT in the case of Kwiksave Stores Ltd v Swain & Others [1997] ICR 49. When exercising such a discretion, the Judge should always consider the following matters:
  - i. The employer's explanation as to why an extension of time is required. The more serious the delay, the more important it is that the employer provide a satisfactory and honest explanation. A Judge is entitled to form a view as to the merits of such an explanation.
  - ii. The balance of prejudice. Would the employer, if the request for an extension of time were to be refused, suffer a greater prejudice than the complainant would suffer if the extension of time were to be granted?
  - iii. The merits of the defence. If the employer's defence is shown to have some merit in it, justice will often favour the granting of an extension of time – otherwise the employer might be liable for a wrong which it did not commit.
4. First, the delay was just 22 days. The reason for it was that the Respondent was waiting for their insurers to respond, and then they needed to find private representation. That, on the face of it, was a plausible explanation. Second, I found that the balance of prejudice favoured the Respondent substantially. Reference is made to the decision in support of the Judgment. Third, on the face of it, the Respondent's defence appears to be arguable.
5. I do not believe that I was misled by the Respondent. If the Respondent has not complied with the first case management order, that is a separate matter, and will be dealt with appropriately.

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Employment Judge G P Sigsworth

Date: 3 May 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE