



# THE EMPLOYMENT TRIBUNALS

**Claimant**

Ms Nicole Butler

**Respondent**

Win Win Management UK Ltd

**JUDGMENT (Liability Only )**

**Empolymnt Tribunals Rules of Procedure 2013 –Rule 21**

1. The respondent's name is amended to that shown above.
2. The claims of breach of contract, unlawful deduction of wages and failure to pay compensation for taking annual leave are well-founded
3. The Hearing listed for 23<sup>rd</sup> July 2018 remains as listed but will now determine remedy only.

**REASONS**

1. The claim was presented on 27 March 2018 against "Winwin Management" . The address given for service was Oak Bank Business Centre, Mickley Hall Lane, Nantwich, Cheshire CW5 8WH. The claim form was sent to that address by post on 3 April 2018 . No response presented by the due date of 1<sup>st</sup> May. The file was referred to me and on 8 May I declined to issue a judgment under rule 21 because a company search revealed the service address to be the registered office of Win Win Management UK Ltd, but its postcode was CW5 8AH. I caused a letter to be sent to the claimant asking her to confirm that limited company was her employer and if so did she agree to its name being amended. I also asked if she consented to the claim being sent again to the correct postcode. She gave her consent to both steps on 25 May, so Employment Judge Buchanan ordered the claim to be re-sent. No injustice is done by amending to add the words "(UK) Limited" to the title of the respondent.

2. A claim may be validly served on a limited company either at its registered office or its place of business. This claim was posted to the registered office and returned, by Royal Mail, marked "addressee gone away" on 26<sup>th</sup> May . I caused a letter to be sent to the claimant asking if she had any other means of contacting the respondent. She replied the former directors had opened another business.

3. A limited liability company is an association of human beings registered at Companies House. It is a legal **person** in its own right. The people who manage the company are called Directors. The people who "own" the company are called shareholders. Neither the Directors nor the shareholders are personally responsible for the debts of a company. If it runs out of money, its creditors have no right to be paid by the Directors , shareholders or any new company they form .

4. I ordered the claim to be sent again which it was on 26 June . It was returned on 27 June by Royal Mail marked “addressee gone away”

5. In Zietsman and Du Toit t/a Berkshire Orthodontics-v-Stubbington the question on the appeal was whether an Employment Tribunal was entitled to conclude Mr Du Toit had been properly served with the proceedings. Ms Stubbington presented her complaint, naming Berkshire Orthodontics as respondent. No response was entered and on 1 October 1999, the complaint came before a Judge . He ordered **an** amendment to name Mr Zietsman and Mr Du Toit, trading as Berkshire Orthodontics, as respondents and proceeded to hear the claim in their absence. He upheld it.

6. Mr Du Toit lodged application for review saying he had received notification of the decision on 22 October but did not know about the Tribunal case until that date. That review application was heard and dismissed. The Tribunal identified the relevant provision in the Employment Tribunal Rules of Procedure 1993 as Rule 11(1)(b) by which it had power to review its decision on the ground that “(b) a party did not receive notice of the proceedings.” They heard evidence from Mr DuToit, none of which they rejected. He had ceased to practice from the service address did not visit the premises, nor make arrangements for mail to be forwarded. The Tribunal regarded that as irresponsible conduct, to which his ignorance of the proceedings was wholly attributable so declined to review the original decision.

7. In that case the tribunal was dealing with the partnership rather than a company but comments on appeal made by His Honour Judge Peter Clark are just as valid. He accepted Mr DuToit had no actual notice of the proceedings. Whether he was deemed to have notice under the provisions of section 7 of the Interpretation Act 1978, was the question. The 1993 Rules were to be read in conjunction with Section 7 of the Interpretation Act 1978, see Migwain Ltd v TGWU [1979] ICR 597; followed in T & D Transport v Limburn [1987] ICR 696, Rule 20(3) provided

*"All notices and documents required or authorised by these rules to be sent or given to any person hereinafter mentioned may be sent by post ... to*  
*(c) in the case of a notice or document directed to a party –*  
*(i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, ... or*  
*(ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the United Kingdom ...*

8. Section 7 of the Interpretation Act provides

*"Where an Act authorises or requires any documents to be sent by post (whether the expression 'serve' or the expression 'give' 'send' or any other expression is used) then, unless the contrary intention appears, the service is **deemed to be affected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.**"*

9. The Rules now say

**86(1)** Documents may be delivered to a party (whether by the Tribunal or by another party)—

(a) by post;

*(b)by direct delivery to that party's address (including delivery by a courier or messenger service);*

*(c)by electronic communication; or*

*(d)by being handed personally to that party...*

The EAT said that *"in the context of employment protection legislation. It will often be the case that an employer goes out of business and ceases to trade from the premises at which the former employee worked. In such circumstances where is the employee to direct his claim? It must be to the last known place of business"*.

10. I am convinced this claim should be deemed to have been validly served on the respondent. Limited liability companies which simply cease to trade and do not change the address of their registered office as revealed by a Companies House search are a common occurrence in the Tribunal. A purposive interpretation of the Rules is necessary in the interests of justice

11. An Employment Judge is required by rule 21 of the Employment Tribunals Rules of Procedure 2013 (the Rules) to decide on the available material whether a determination can be made and if so, obliged to issue a judgment which may determine liability only liability and remedy. I have in the claim form sufficient information to enable me to find the claims proved on a balance of probability but not enough to determine the sums to be awarded. As there is a hearing listed in three weeks time anyway, I believe any Employment Judge will obtain more accurate information from the claimant if she attends in person to answer questions than if I were to send her a written questionnaire as to her actual losses.

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**TM Garnon Employment Judge**  
**Date signed 3<sup>rd</sup> July 2018.**