EMPLOYMENT TRIBUNALS

Claimant: Ms Joanna Marzec

Respondent: Wincanton Group Limited

JUDGMENT

The claimant's representative's application received on 3 April 2017 for reconsideration of the costs judgment sent to the parties on 20 March 2017 is refused because there is no reasonable prospect of the judgment being varied or revoked.

REASONS

1. Following the claimant's withdrawal of her claim on the third day of what would have been a four day hearing the respondent made an application for costs including an order for wasted costs against the claimant's representative K L Law Limited.

2. The Tribunal determined that a wasted costs order should be made and gave judgment accordingly. Reasons were provided at that time and subsequently written reasons were provided.

3. It is in respect of that costs judgment that the claimant's representative, Mr M Kozik, of K L Law Limited, makes this application for a reconsideration.

4. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provide in Schedule 1 at Rule 70 as follows:

   "A Tribunal may, either on it's 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."

5. Pausing there for a moment it could be contended that it is only a party who may apply for a reconsideration, whereas in the case under consideration it is the representative rather than the party itself. However, having made that observation I will assume that the Tribunal has

jurisdiction to entertain an application by a representative.

6. Rule 72 provides as follows:

> "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… 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."

In this judgment I am exercising my power under the first part of Rule 72.

7. As is noted in Rule 70, the sole ground for a judgment being reconsidered is whether it is necessary to do so in the interests of justice. Under the predecessor of the current rules there were five specific grounds for what was then called review, and one of those grounds was that the interests of justice required it.
I accept that the formulation under the current rules may be a little broader but nevertheless I consider that jurisprudence under the old rules can still guide the way in which the current rules should be applied.

8. In the case of Stephenson v Golden Wonder Limited 1997 IRLR 474 it was pointed out that what were then the review provisions were not intended to provide the parties with an opportunity of a re-hearing at which the same evidence could be rehearsed with different emphasis.
9. Moreover, despite the phrase "interests of justice" appearing to be a broad one, it must be bourne in mind that there is a difference between a reconsideration by the Tribunal itself and an appeal which of course can only be made to the Employment Appeal Tribunal in the first instance.

10. Within the five pages of the application grounds, under the heading "Criticism of the Judgment" are set out under the following headings those criticisms:-
"Findings without any evidence to support it; Perverse Finding; "something which is missing from the reasons"; "This finding as a whole had little sense/logic". There are then a series of other observations under the heading "Failing to establish causation between (the denied) negligence and incurring wasted costs" – where the criticism is that there was no evidence in respect of a certain matter - followed by speculation as to how the outcome to the proceedings in respect of a non-disclosed diary might have been different.
A further criticism raised is that "the approach taken at paragraph 28 was wrong in law, and/or perverse." There is then a section under the heading "The Judge vis a vis the claimant's representative, bias and improper conduct of the costs hearing."

11. It is plain to me, not only from the headings to which I have referred, but also the detail which follows under those headings, that what the claimant's representative has put before the Tribunal as a reconsideration application is in fact a notice of appeal – albeit one directed to the wrong

place. To take an example, if as the claimant's representative now contends I was guilty of bias and improper conduct, how does the representative expect that serious allegation to be dealt with by the Tribunal at a reconsideration hearing where the Judge in question remains a member of the Tribunal? Clearly, the accusation would then be made that I had been judge and jury in my own cause.

12. It follows therefore that I consider that the reconsideration application has no reasonable prospect of success because the material it contains is, if anything, grounds for appeal rather than grounds for a reconsideration. It is for that reason that I exercise my discretion under Rule 72 to refuse the application.

Employment Judge Little

Date 24th May 2017