



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M A Khan

**Respondent:** MMBA Accountants Limited

**HELD AT:** Manchester

**ON:** 31 March 2017

**BEFORE:** Employment Judge Feeney

## JUDGMENT ON RECONSIDERATION

The judgment was signed on the 3rd April and sent to the parties on 5th April. It was a Judgment specifically on costs and the claimant was awarded £5,112. The respondent asked for reasons and reasons were provided on the 3rd July 2017. The respondent now seeks a reconsideration of the decision to award costs against him. The application was made on 18th July and was therefore in time.

## REASONS

The reasons for the reconsideration application were as follows.

1. That the Judge did not consider the following evidence and documents in reaching her decision.

(i) the full evidence provided by the respondent was not considered because the Judge mentioned in paragraph 4 of her written judgment that the evidence was limited and unconvincing. Incorrect figures were mentioned in the judgment such as a turnover figure of £65,000 and the understanding of the financial statements including the profitability of the business was completely incorrect.

(ii) the Judge stated there was considerable doubt as to where the payments out of that account went to, the respondent submitted the business statement of November 2016 gives description of any payment that was going out.

(iii) the Judge mentioned the financial difficulty of the respondent and their decision not to appeal the original judgment. The respondents bank statement dated 30th November showed a balance of £13.08.

(iii) the respondent had had to take a loan of £5,000 to pay off the claimant's judgment and a further loan on 9th February to fund the cost hearing.

(iv) the Employment Judge mentioned that the respondent was not cross examined and this led to a lack of understanding about the respondent's financial position.

(v) as a result the figures mentioned by the Employment Judge were incorrectly or wrongly calculated, in particular Mr Bague's salary.

(vi) that the 2016 accounts were also provided on the day of the hearing and the Judge has completely ignored them. There was a reference to other bank statements not being provided for other months but November and March were provided. Further, the financial accounts of the year ending 30th June 2014 and 30th June 2015 were provided but no account was taken of those.

(vii) that the witness statement was not read in full because it was suggested that the respondent had not said they would go out of business due to the Costs Order whereas in fact this is mentioned in paragraph 21 of the witness statement.

(viii) the Judge did not find the respondent's financial statements gave a full picture of the financial strength of the business however this is a statutory document and should be accepted on the face of it and the Judge's ignore the current liabilities of the company including but not limited to the loan of £6,800 which was taken out on two occasions to pay off the original judgment and to fund the costs claim.

(ix) it was clear that the business was left only with the balance of £13.08.

(x) that the Judge has accepted the gross profit of the business as being healthy however that is not a relevant matter, the question is what's the net profit.

(xi) that the Judge misunderstood how the accounts worked as she relied on there being an excess of £1,300 in the business bank account which was actually an insignificant amount.

(xii) recent changes in the industry means that the respondents are losing a number of clients due to legislation as IR35 which will result in a loss of £20,000 of annual turnover.

2. Reconsideration of judgments is contained in rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. It says that:

- “(70) A Tribunal may, either on its own initiative or on the replication of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the decision may be confirmed, varied or revoked. If it is revoked it may be taken again.
- (71) Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing within 14 days of the date on which the written record or other written communication of the original decision was sent to the parties, or within 14 days of the date when the written reasons were sent out (if later) and shall set out why reconsideration of the original decision is necessary.

Process

- (72) An Employment Judge shall consider any application made under rule 71:
  - (i) If the Judge considers 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 that 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.
  - (ii) If the application has not been refused under paragraph (i) the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (i), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further representations.
  - (iii) Where practicable the consideration under paragraph (i) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full Tribunal which made it, and any reconsideration under paragraph (ii) shall be made by the Judge or, as the case may be, the full Tribunal which made the original which made the decision. Where that is not practicable the President, Vice President or Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full Tribunal, either shall direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.”

In relation to the original costs order Rule 84 Tribunal Rules 2013 refers to consideration of the ability to pay is also be taken into account. The EAT in Benjamin -v- Interlating Ribbon Limited EAT 2005 held that where a Tribunal has been asked to consider a party's means it should state in such reasons whether it is in fact done so and if it has, how this has been done.

### **Conclusion**

3. I make this decision under regulation 72(1) of the above Regulations.
4. The overall ground of the respondent's application for a reconsideration of my judgment is that I have misunderstood their documentation and taken a view not substantiated by the documentation that the respondent is not impecunious.
5. In deciding whether to make a costs order an Employment Tribunal may have regard to the paying party's ability to pay, I find that there was sufficient evidence before me at the Costs Hearing to decide that the respondent was in a position to pay the modest costs being awarded of approximately £5,000.
6. The respondent's owner Mr Bague was paying his wife a reasonable amount of money per month and he had shown the capacity to borrow in the past. He had chosen to borrow money to contest the costs hearing rather than to settle the claim when the costs were £4,000 .
7. As I said in the costs hearing I took into consideration that Mr Bague had been heard to say that he would rather pay a solicitor than pay the claimant, I refer to paragraph 24 of my decision. This suggests he had the ability to pay the amount at issue at that stage. He paid the amount awarded to the claimant by borrowing the money. Therefore he has the capacity to borrow.
8. Even if the points made in the reconsideration request are correct there was still sufficient evidence as delineated above to find the respondent had the capacity to pay the costs award.
9. Accordingly I find that the claimant's application for a reconsideration has no reasonable prospect of success and I refuse it.

Employment Judge Feeney

Date 3<sup>rd</sup> October 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
9 October 2017

FOR THE TRIBUNAL OFFICE