Case No: 2200415/2017

EMPLOYMENT TRIBUNALS

Claimant: **Mr J. Banerjee**

Respondent: **Royal Bank of Canada**

London Central **9 November 2017**

Employment Judge Goodman

RULE 72 CONSIDERATION OF APPLICATION TO RECONSIDER

1. Under the Employment Tribunal Rules of Procedure 2013 a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal "may reconsider any judgment where it is necessary in the interest of justice to do so", and upon reconsideration the decision may be confirmed varied or revoked.

2. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal that heard it.

3. Under the 2004 rules prescribed grounds were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds, which were that a party did not receive notice of the hearing, or the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. The Employment Appeal Tribunal confirmed in Outasight VB Ltd v Brown UKEAT/0253/14/LA that the

2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).

4. The claimant has written on 31 October 2017 seeking reconsideration of the judgement on his application for costs which was sent to the parties on 19 October 2017, ordering that respondent pay the claimant's costs in the sum of £8,100, for the cost of the postponement resulting from the respondent's breach of an order. The claimant seeks a variation of the order so as to include the cost of the order itself.

5. He followed this up with email on 2 November that: "it seems that the fee notes from my lead and junior counsel did not go through with my original email. Please find attached and accept my apologies". Attached are the fee notes of leaking counsel attending the hearing of 13 October 2017 at £5000 plus VAT, and another for advising in consultation on 4 October 2017 at £1,165 plus VAT.

6. In the original costs application of 20 September 2017, the claimant provided full details of the grounds, and the amounts sought, with copy invoices. The concluding page of his application said: "in the event these costs are not agreed, I will further apply the costs of leading and junior counsel at the PH which will be necessary to determine my costs". The respondent replied to this on 9 October 2017 to the tribunal, and sent written submissions to the tribunal 16 October, the day before the hearing.

7. The tribunal cannot trace that any further application was made for the costs of the hearing itself, either before or at the hearing. I have reviewed my notes of the hearing, where the claimant was represented by leading counsel. There was discussion of individual items of costs, as well as the general principles of whether an order should be made. Nothing was said about the costs of the hearing. This fact was noted in the judgment (30)

8. In the absence of information or explanation as to why the claimant did not apply for the costs of the hearing, or give the tribunal the information, which would have left it to conclude that an application for the costs of the hearing was being made, the Tribunal concludes that this occurred by oversight.

9. Had an application been made, the tribunal would have had to consider whether the hearing was in any event required to deal with the specific disclosure points specifically reserved to that hearing as well as the costs points. The tribunal would have had to consider whether if there had been no costs application to decide, the hearing would still have taken taken place, and whether the claimant would have been represented on the specific disclosure matter alone by senior or junior counsel. These points will become relevant if the matter is reconsidered and will have to be argued, in person or by written representation.

10. The interests of justice include fairness, which might in some circumstances include a party adding a point, or adding evidence,

which he could have brought as the hearing but overlooked for some reason. Knowing what the reason was for not doing so first time round may be relevant to fairness, but on the face of it, this point could have been argued, but was not. I add that the tribunal noted at the time that no application for costs of the hearing was made and concluded it was probably because of the specific disclosure application, and the list of issues which required revision, though in the event that was deferred.

11. The interests of justice also require finality, and the parties should not as a rule have a second shot at a decision with which they are disappointed, and that the other side should not be put to additional expense in arguing points which could have been brought at the hearing.

12. The application to reconsider does not disclose grounds from which it could be argued successfully that it should be reconsidered. I conclude it has no reasonable prospect of success. Accordingly it is refused under rule 72.

Employment Judge Goodman on 9 November 2017