



EMPLOYMENT TRIBUNALS

Claimant: Mr D Hoppe

Respondents: 1 HM Revenue & Customs
2 Health Assured Limited
3 National Audit Office
4 Independent Office for Police Conduct

JUDGMENT ON RECONSIDERATION

The application for a reconsideration of the judgment sent to the parties on 12 February 2018 is refused.

REASONS

1. By a letter dated 17 February 2018 the claimant asked for “clarification and review of the CMO and Judgement that you determined from [sic] the hearing on 8 February 2018.” The claimant said that in particular he asked for my “reasoning and basis for:
 1. Determining that proceeding with a hearing in my absence rendering me deaf and dumb to the proceedings was in accord with the request that I had made for the matters to be dealt with by correspondence.
 2. What consideration you gave to the medical evidence that was presented and the lack of any response to the repeated requests for clarification of any specific requirement for medical evidence when determining that proceeding with the hearing in my absence was appropriate and that proceeding by correspondence was not appropriate.
 3. At paragraph 4 of the CMO you indicate that proceeding by correspondence may not be the fairest course of action but provide no reasoning for this decision and show no recognition of the impacts on parties or reference to the medical evidence that was available to you or the overriding objective. Please provide clarification of your reasoning and what consideration you gave.
 4. You suggest that you are following my requests to proceed by correspondence by considering in my absence the responses to questions previously given. On

what basis did you conclude that such responses were complete in the absence of any response from Tribunal to the request for matters to be dealt with by correspondence or any attempt by Tribunal to seek such submissions.”

2. The Tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where “it is necessary in the interests of justice to do so.” Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.
3. The approach to be taken to applications for reconsideration was set out in the recent case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA in the judgment of Simler P. The Tribunal is required to:
 - 3.1. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;
 - 3.2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead the ET to vary or revoke the decision; and
 - 3.3. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.
4. In Serco Ltd v Wells [2016] ICR 768, EAT, HH Judge Hand QC, following a careful analysis of the authorities, both as to an employment tribunal's powers to vary and set aside an earlier case management order under rule 29 of the Employment Tribunal Rules of Procedure 2013 and previous incarnations of that rule, and as to the equivalent powers of the civil courts under CPR r 3.1(7), emphasised the restrictive nature of the power. He observed that both sets of rules must be taken to have been drafted with the principle of finality, certainty and the integrity of judicial orders and decisions in mind, a principle that, as the authorities indicate, usually means that a challenge to an order should take the form of an appeal to a higher tribunal rather than being looked at again by the same judge or a judge of equivalent jurisdiction 'save in carefully defined circumstances'. Therefore, before exercising their power under r 29, a tribunal should interpret the words 'necessary in the interests of justice' as limiting any interference with the order to where: (a) there has been a material change of circumstances since the order was made; (b) the order was based on a misstatement or omission; or (c) there is some other 'rare' and 'out of the ordinary' circumstance (see para 43). (See: Harvey on Industrial Relations and Employment Law, P1.1.L[374.02]).

5. In my view the matters raised in the claimant's application are a combination of requests to reconsider case management orders and to reconsider the decisions made in the judgment referred to above. Overall the claimant appears to seek reconsideration of the decisions made at the hearing leading to that judgement because they were taken in his absence. It is therefore appropriate to address the application in respect of the judgment first. I cannot conceive of any circumstance in which the exercise of the power under rule 29 in relation to case management orders could be said to have arisen because of a material change of circumstances. Insofar as the request for reconsideration is based upon the claimant's request for proceedings to be dealt with by correspondence, which I consider could be described as an out of the ordinary circumstance, then it can be can be reconsidered in respect of the judgment if it is in the interests of justice to do so. If the claimant is unable to succeed in his application for reconsideration upon that basis then a separate consideration, that the order was based on a misstatement or omission, will not succeed either. In the circumstances it seems to me to be appropriate to deal with all the matters raised by the claimant in this single judgment. Perhaps it is appropriate to summarise this by saying that I consider that the applications and the issues and analysis that are required are coextensive.
6. All that said, it is notable that the claimant is seeking an explanation for the reasons which I gave in writing. I have looked again at the matters set out in paragraphs 1 to 10 of the reasons given for the judgment and in paragraphs 4 to 15 under the heading "The issues". The claimant has asked for clarity about my reasoning. I had hoped that it was clear. I am not sure that by repeating it my reasoning will be made any clearer or less clear.
7. I turn to the individual points made by the claimant in his application.
8. I accept that proceeding with the hearing in the claimant's absence was not in accord with the request that he made for the matters to be dealt with by correspondence. The reason why I decided to do so is set out in paragraphs 2-9 of the reasons for the judgment.
9. In paragraphs 10 to 15 of the case management discussion I set out my approach in relation to medical evidence.
10. As to proceeding by correspondence not been the fairest course of action I take the view that the proposition is self-evident. Nevertheless, these matters have been addressed in paragraphs 4 – 7 of the case management order.
11. As to whether I considered that the claimant's responses to the applications made by the respondents were complete, I acknowledge that this was based upon an assumption as set out in paragraph 8 of the reasons for the judgment. By its very nature an assumption, even if formed on reasonable grounds, may not reflect the complete position. However, I note that in his application for reconsideration Mr Hoppe does not in fact suggest, other than by implication, that the decisions to dismiss the complaints of the third and fourth respondents or to postpone the application to dismiss the complaint against the second respondent should be revoked. I infer from the intimation that he wishes to appeal the decisions that he does not agree with them. However, in the absence of any indication as to what

further material by way of correspondence or written representations the claimant might have put before me, I am unable to consider the merits of this point further.

12. Insofar as this is an application to have the dismissals of the complaints against the third and fourth respondents reconsidered on the ground that it is in the interest of justice to do so I have formed the opinion that the application for reconsideration, which I have set out fully, has no reasonable prospect of success since it simply does not engage with the merits of the basis upon which he made those complaints or seek to argue that the basis upon which the respondents sought to have struck out was wrong in law.
13. For these reasons, I consider there is no reasonable prospect of the judgment being varied or revoked upon reconsideration. I therefore refuse the application at this stage.
14. As indicated above I consider that this decision fully and appropriately also addresses the application for reconsideration of any case management order made at the preliminary hearing.

Employment Judge Tom Ryan 23 March 2018

JUDGMENT AND REASONS SENT TO THE
PARTIES ON

3 April 2018

FOR THE TRIBUNAL OFFICE