



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr A Almoghrabi

and

Respondent

Grant Thornton UK LLP

DECISION ON APPLICATION FOR RECONSIDERATION Rules 70-73 of Schedule 1 to the Employment Tribunals (Constitution and Rules of procedure) Regulations 2013

1. The Claimant's application for reconsideration of the judgment sent to the parties on 21 August 2018 is refused.
2. Reasons for this decision are attached.

REASONS

Background

- 1 The Claimant was ordered to pay a deposit of £500 following a preliminary hearing held on 4 June 2018. The Order was sent to the Claimant on 25 June 2018. The note accompanying the Order stated *"Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash."*
- 2 The Claimant failed to pay the deposit by the due date of 16 July 2018. The complaints of Direct Race Discrimination and Race Harassment were therefore struck out under rule 39(4) of the Employment Tribunals Rules of Procedure 2013. The strike out judgment with reasons was sent to the parties on 21 August 2018.
- 3 On 21 August 2018 the Claimant made an application to the Tribunal, expressed to be an appeal, but which I have considered as an application for reconsideration of the strike out judgment. The application read:

"I am appealing against the decision to struck out the case due to the failure to pay deposit due to the circumstances within the control of the tribunal.

The Tribunal only accepts payments by cheque or postal order. The tribunal is aware that I am currently reside in Germany so the option of payment by postal

order was rolled out. Also my bank in Germany does not provide cheques. I have contacted the tribunal in this respect which I was told that those only two options for payments. Therefore I have emailed the Tribunal asking for alternative directions regarding the transfer of the deposit.

Therefore I believe to stuck the case out for reasons outside my control is not fair.

I am looking forward to hearing from you.”

Relevant Law

- 4 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 -
Rule 39 Deposit Orders

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. ...

Rule 70 Principles

A Tribunal may, either on its 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.

Rule 71 Application

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) 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 that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Rule 72 Process

(1) 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 (including, unless there are special reasons, where substantially the same application has been made and refused), 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. ...

Decision

- 5 On 10 July 2018 the Claimant asked for the Tribunal's bank details so that he could pay the deposit by international bank transfer, as he lives in Germany and his German bank does not issue a cheque book and he cannot get a postal order in Germany.
- 6 On 23 July 2018 the Tribunal replied that it cannot accept direct payments, and could only process cheques or postal orders and suggested that he may need to ask his bank for a bankers draft.
- 7 On 24 July 2018 the Claimant again asked for alternative means of paying the deposit. No other means of payment was available.
- 8 There is no discretion in rule 39(4). It states that if the deposit order is not paid "*the specific allegation or argument to which the deposit order relates shall be struck out.*"
- 9 There is no reasonable prospect of the judgment being varied or revoked and the application is refused.
- 10 If the Claimant wishes to appeal the strike out judgment he may make an application to the Employment Appeal Tribunal whose contact details are available on their website.

Employment Judge Vowles

Date:21.09.18.....

Sent to the parties on:

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For the Tribunals Office