



EMPLOYMENT TRIBUNALS

Claimant: Mr A Wilkinson

Respondent: Peninsula Business Services Ltd

Employment Judge Tom Ryan

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the application for reconsideration made on 19 September 2018 is dismissed.

REASONS

1. This is an application for reconsideration of the judgment (including written reasons) sent to the parties on 7 November 2018.
2. The judgment and reasons were given to the parties orally at the hearing. Reasons in writing were requested at the hearing. On 6 September 2018 Mr Wilkinson wrote to the tribunal enquiring when the reasons would be sent. He intimated an intention to appeal. On 19 September 2018 he applied for a reconsideration. In that letter also stated that there was content that he did not want to go on the public register.
3. The written judgment and reasons were sent to the parties on 7 November 2018. By letter of the same date the claimant was given the opportunity to renew the application for reconsideration once he had considered the judgment and reasons. On my direction the claimant was informed that the judgment would not be placed in the public domain at that stage and he was given the opportunity to make further representations concerning that also. The claimant had until 21 November 2018 to make those further representations. No such representations had been received at the point of this reconsideration decision.
4. 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.

5. Under rule 71 an application for reconsideration must be made within 14 days the date on which the judgment (or written reasons, if later) was sent to the parties.
6. The approach to be taken to applications for reconsideration was set out in the recent case of **Liddington v 2Gether NHS Foundation Trust** UAEAT/0002/16/DA in the judgment of Simler P. The tribunal is required to:
 - 6.1. 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;
 - 6.2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and
 - 6.3. 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.
7. In paragraph 34 and 35 of the judgment Simler P included the following:

“A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.

Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”
8. I treat this as an application for reconsideration in time because it was in fact made before the written judgment and reasons were sent to the parties and time runs from that point.
9. In his application for reconsideration the claimant has set out a number of matters. He describes one as a point of law. If that is a proper description it is pre-eminently a matter that should properly be canvassed before the Employment Appeal Tribunal.

10. Towards the end of his letter the claimant says “The judge told me I could not discuss this in the case although it had been cleared case management. I felt it important my case to paint a picture of the type individuals the management were. I would like to know why?” I understand this to be a reference to practice that the claimant says the respondent adopted of a traffic light system about an individual’s availability to take on work. This matter was canvassed in the claimant’s witness statement at section 5 under the heading “occupational health & improper business practices”. This was, however, not a matter that I consider to be relevant in the course of deciding whether the complaint of constructive unfair dismissal, as put forward by the claimant, was made out.
11. The remainder of the matters raised in the application for reconsideration are, so it appears to me, instances of the claimant trying to reargue the facts of the case. Whether this is by repetition or by formulating the factual argument in a new way, the opportunity for a reconsideration application, as indicated in the judgment of Simler J above, does not exist for that purpose.
12. Taking all these matters into account, I conclude that the claimant has not provided any proper basis upon which a judge could find that it was in the interests of justice to reconsider the judgement, revoke it and order a fresh hearing.
13. For all those reasons I refuse the application for reconsideration at this preliminary stage.

Employment Judge Tom Ryan

Date 30 November 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON
13 December 2018

FOR THE TRIBUNAL OFFICE