Case No: 2414843/2018

EMPLOYMENT TRIBUNALS

Claimant: Miss A Stewart

Respondent: YC Channel Limited

JUDGMENT

The respondent's application dated 19 and 21 November 2018 for reconsideration of the judgment sent to the parties on 9 November 2018 is refused.

REASONS

1. I have undertaken preliminary consideration of the respondent's application for reconsideration of the judgment awarding the claimant £461.25 following a hearing on 29 October 2018. That application is contained in two brief emails of 19 and 21 November 2018.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70 of the 2013 Rules of Procedure).

3. Rule 72(1) empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016.

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> **"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 by 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."

6. Finally, in common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

My Decision

7. No response form had been filed in these proceedings. The proceedings had been served on "Signature Channel" at the address where the claimant worked, but the claimant showed at the hearing that this was a trading name of the respondent company responsible for paying her.

8. The emails from the respondent raise issues which could have had a bearing on the outcome. However, the respondent has ignored the Tribunal's letter of 29 November 2018 asking for confirmation by 12 December of why no response form making these points was filed. No reply has been received. This is puzzling. One might have thought that if the respondent had never received the claim form (because it was sent to a trading name at an address not the registered office) it would have said so by return.

9. In the absence of any explanation at all the respondent has not shown that its application is well founded. I conclude that whatever the merits of the arguments now raised, they could have been raised by way of a response form during the proceedings, leading to an adjudication on the merits at the final hearing. It would not be in the interests of justice to allow the respondent to raise defences which it should have raised at the proper time.

10. On the information before me, therefore, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked.

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Employment Judge Franey

21 December 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

7 January 2019

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FOR THE TRIBUNAL OFFICE