



EMPLOYMENT TRIBUNALS

Claimants

(1) Mr Caetano Marques

and

Respondents

- (1) Twenty-Four Seven
Recruitment Services Ltd
(2) Tempay Ltd – In voluntary insolvency
(3) Wincanton Group Ltd
(4) DHL Services Ltd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Claimant applied for reconsideration of the Judgment dated 16 August 2017. The grounds were set out in the application of 7 and 12 March 2019. The application was rejected and a Judgment dated 14 March 2019 was sent to the parties the following day. On 28 March, however, Messrs Pattinson and Brewer applied for reconsideration of the reconsideration judgment of 14 March 2019
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under rule 71, an application for reconsideration under rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received inside the relevant time limit, just.

3. The grounds for reconsideration are those set out within paragraph 4 of the Judgment of 14 March 2019.

Background

4. The claim was issued in 2015 and has travelled under the lead case of Mr Afonso (No. 1400846/2015). There are 75 claims in total including this one; 12 are unrepresented, 51 are represented by Pattinson and Brewer and 12 are now (recently) represented by Tom Street.
5. The Claimant had previously been represented by his union, the GMB, through Messrs Pattinson and Brewer. They came off record for him on 21 June 2017 and the tribunal sent the usual change of address letter to him at 112 Salisbury Street. He was also then asked whether he wished to pursue his claim. In the most recent application for reconsideration, Messrs Pattinson and Brewer have accepted that there was an administrative error on their part in that the Claimant's correct address was not passed to the Tribunal at that point.
6. On 10 July 2017, a Notice of a relisted Preliminary Hearing was sent to the Claimant. A copy of the Judgment from the Preliminary Hearing was then sent to him on 21 July and, in light of the fact that the Tribunal had received nothing from him in return, a strike out warning followed on 31 July. Again, there was no response from the Claimant and the claim was struck out on 16 August because it had not been actively pursued.
7. On 7 March 2019, the Claimant wrote to the Tribunal and asked for his case to be reconsidered. He stated that he had changed address in 2016 and alleged that he had informed the GMB and/or Pattinson and Brewer of that fact. He had not, however, informed the Tribunal when they had come off record, nor did they.
8. The Tribunal raised a number of questions of the Claimant on 8 March and he responded on the 12th; he stated that he had not been aware that he had to inform the tribunal that he had changed address. He stated that he had informed his union (three times) and his current solicitors, Pattinson and Brewer, that he had changed address.
9. On the basis of all the information, the application for reconsideration was dismissed in the Judgment of 14 March 2019.
10. Following receipt of Pattinson and Brewer's most recent application, the Respondents were invited to comment and the Tribunal received emails on 9

April from the Fourth Respondent and on 10 April from the First and Third Respondents.

Consideration

11. The Claimant's solicitors raised 3 substantive issues within their application; first, they alleged that the Claimant did not miss any substantive deadlines within the litigation. The previous Judgment did not suggest that he had. The 'failings' referred to within paragraph 6 of those matters set out above.
12. Secondly, it was alleged that the Claimant had not received any of the letters from the Tribunal warning him that his claim might have been struck out. That was correct; it was as a result of his solicitors' administrative error.
13. Finally, it was asserted that the Respondents would suffer no prejudice if the Judgment was reconsidered. It is not in the interests of justice for the Respondents to have to deal with claims which have not been prosecuted appropriately and for the Tribunal to allocate its limited resources to litigants who have not acted diligently in pursuing them. The decision in Newcastle upon Tyne City Council-v-Marsden [2010] ICR 743 is not a template which can be applied to all cases of this sort. In reality, this application is an attempt to have a second bite at the issues which were considered in the Judgment of 14 March 2019, essentially on the grounds of the solicitors' own failure (see Ministry of Justice-v-Burton [2016] EWCA Civ 714). The application is dismissed.

Employment Judge Livesey
Dated 12 April 2019
Judgment sent to Parties on

12 April 2019

For the Tribunal Office