



EMPLOYMENT TRIBUNALS

Claimant: Brett Millington

Respondent: Asda Stores Plc

Heard at: Exeter **On:** 20 September 2019

Before: Employment Judge Housego

Representation

Claimant: Written request

Respondent: Ex parte application

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that 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 has applied for a reconsideration of the reserved judgment dated 25 June 2019 which was sent to the parties on 23 July 2019 ("the Judgment"). The grounds are set out in the claimant's email to the Tribunal of 14 August 2019.
2. That email states:

"Brett millington

Wed 14/08/2019 13:47

• BRISTOLET <bristolet@Justice.gov.uk>

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Hello I am emailing regarding the court date I missed at the end of June. Unfortunately I have been having major technical problems with my email account and I have not only not received some correspondence from yourself, I have also had emails that I have sent not been delivered. I believe this is a problem with my phone as I have sent emails recently regarding this issue and after phone calls to you I have been told that they haven't been received either.

In the letter that was sent regarding the £850 charge, I was given a cut off date to reply that had expired before the letter was sent to me. After speaking with your team on the phone they agreed that this must have been due to an error on your part so asked me to message you now explaining why I missed the court appointment.

5 days before the court date I messaged Leigh to say that I would not be able to make it to the court date due to work commitments. I explained that I had received a letter saying that a preliminary date had been set for November so was completely unaware that I was due in court until I sent this message. In Leigh's comments about this message he said that I told him I might not be able to attend. This confuses me as there was nothing in my message that suggested I would be available to make the court date. I explained how I had just started work with a new employer so would be working on the day I was due in. As I have just started work with this company and I am an agency worker trying to get a full time job here, taking time off at such short notice wasn't possible for me.

I was instructed to send an email to you explaining this which I did immediately but as it didn't show up in my outbox I messaged Leigh to see if he had received it. As I didn't get a reply from him I assume that it was delivered as he replied to my previous message almost immediately.

I also need to explain how this penalty charge would put me in a seriously bad position financially. Before I was sacked from Asda I stupidly took out a pay day loan to cover the costs of rent and Christmas. After being sacked I had no way of paying this back and ultimately the debt went to a debt collection agency. The same thing happened with my mobile phone. As I am currently still over a thousand pounds into my student overdraft and am still paying monthly bills for these debts, an £850 charge would cripple me financially and leave me in a very precarious situation which I am unsure how I would get out of.

To conclude I'd just like to reiterate that I honestly had no idea that the court date was so soon, which is backed up but the apparently emails that I hadn't responded to/filled out that I was told I had received when I originally phoned a couple of weeks ago. I stand by the fact that I contacted you directly and indirectly to let you know I couldn't make it. I wholeheartedly apologise for how this situation has been handled and am hopefully getting a new phone soon as this is the only form of technology I have that can send or receive emails and I do not have

financial or technical support from anyone else.

Due to the erratic nature of my phone/email could you please call or text me on 07772151582 if I fail to immediately respond to your reply to this message. I will be checking my email regularly and will get my gran to do the same on her iPad but I fear the same situation may happen again

Regards, Brett Millington”

3. 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 within the relevant time limit.
4. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
5. The Employment Appeal Tribunal (“the EAT”) in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review does not mean *“that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order”*. This is not the case here. In addition it is in the public interest that there should be finality in litigation, and the interests of justice apply to both sides.
6. The claimant says that he received no notice of the hearing. He refers to a date in November – the hearing was the following June, 7 months later, yet he had made no enquiry. He wanted to have correspondence by email, and so cannot have legitimate complaint when sent correspondence in the way he requested. Since he said that he would not be attending the hearing, the date it was to be held was not material to him. This point, even if it were a good point is no reason to reconsider the judgment for the reason that follows.
7. There were 2 reasons why his claims were struck out, and the second was that his claim was out of time. This is very clearly set out in the response form. The claimant has never attempted to address this point, and does not do so in his email, above. He wrote his email because he was ordered to pay £850 costs. The hearing was always going to be necessary because the claimant would not deal with this point. He was always going

to lose the case because it was filed too late. Whether he attended or not would not affect the outcome. There is no point in setting aside the judgment for if there was another hearing the result would be the same, and the costs to be awarded against the claimant would be larger, for he does not address the out of time point, which would be determinative at any new hearing, just as it was at the hearing on 25 June 2019.

8. A request for reconsideration has to be received within 14 days, and this was received outside that time, with no reason given. The claimant is right that the sending of the judgment was delayed (as set out above) but he gives no reason why his email was later than the 14 day period after it was sent to him.
9. It is apparent that the sole reason for the application is to seek to have the costs order of £850 reversed. This was awarded because the claimant had failed to respond to the out of time point, which was fatal to his claim, and had been warned of it. He still fails to deal with that point. The costs were incurred because he did not deal with it (and it is apparent that there can be no way that he can deal with the point, for otherwise he would have done so).
10. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Housego

Dated 20 September 2019