



EMPLOYMENT TRIBUNALS

Claimants: Ms M Whatmough & Others

Respondents: 1. IBA Recruitment Limited
2. Spire Hospitality Limited

JUDGMENT

The 2nd respondent's application dated 22nd November 2019 for reconsideration of the judgment sent to the parties on 21st October 2019 is refused.

REASONS

1. I have undertaken preliminary consideration of the 2nd respondent's application for reconsideration of the judgment determining remedy, made by letter dated 22nd November 2019.

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). Rule 71 provides that an application for reconsideration shall be made in writing within 14 days of the date on which the written record of the decision was sent to the parties.
3. Rule 72(1) of the 2013 Rules of Procedure 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 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.”

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. 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.

The Application

7. The 2nd respondent's solicitors, RW Anderson & Co, have made this application beyond the 14 day time limit and so apply for an extension of time. The time limit expired on 4th November 2019 and the application was made on 22nd November 2019.
8. The 2nd respondent blames the delay on its former solicitors, Wise Legal, who it alleges 'failed to engage with the proceedings' and did not keep them informed. The new solicitors; RW Anderson & Co were instructed on 8th November. Due to the fee earner being unfortunately involved in a car accident, there was a further delay in making the application.
9. The 2nd respondent seeks an extension of time to make the application for reconsideration on grounds that it would be seriously prejudiced by a refusal to extend time as the financial impact of the judgment on the business and employees is likely to be severe and might lead to the business being wound up and that it has good grounds for challenging the amounts awarded to the claimants.
10. If time is extended; the basis for the second respondent's application for reconsideration of the remedy judgment is that:
- The previous solicitors, Wise Legal, didn't inform the second respondent or its Director, Mr Salman Butt of the hearing to determine remedy on 18 October 2019
 - Mr Butt attended a preliminary hearing on 18th February 2019 with his solicitor and was awaiting further information.
 - The second respondent was engaged in the proceedings as demonstrated by Mr Butt's attendance at that preliminary hearing and his statement submitted in objection to Ms Whatmough's application to amend her claim to include unfair dismissal.
 - Once he received the remedy judgment, Mr Butt made immediate enquiries.

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- It is in the interests of justice to reconsider the judgment as it is for a significant amount and the second respondent has had no opportunity to challenge the schedule and the awards made.
11. The 2nd respondent did not enter a response to the claims; the claims succeeded and the 2nd respondent was permitted to participate in the determination of remedy. It is apparent from the correspondence retained on file by the Tribunal that Notice of Hearing to determine remedy was sent to the 2nd respondent's solicitors, Wise Legal on 1st May 2019. By emails of 26th July 2019 and 16th August 2019, the Tribunal were informed that Wise Legal were no longer instructed by the 2nd respondent.
 12. At a case management hearing held on 20th August 2019 held to consider the Ms Whatmough's application to amend her claim and which neither respondent attended, Employment Judge Franey acknowledged and took into consideration Mr Butt's witness statement and recorded at paragraph 2 in the case management summary that the proceedings were listed for a hearing to determine remedy on 18th October 2019. As Wise Legal were no longer acting for the 2nd respondent, the record of this preliminary hearing was sent directly to the 2nd respondent at its address of 159 Praed Street, London W2 1RL on 5th September 2019.
 13. It is clear that the 2nd respondent was informed of the hearing date; via its solicitors, Wise Legal who remained instructed for 2 months after the initial notice of hearing had been sent and also directly through the record of preliminary hearing sent to them on 5th September 2019.
 14. In these circumstances, the 2nd respondent's assertion that it was not aware of the hearing to determine remedy is not credible and the application based on that explanation is without merit. As to its complaint about the conduct of Wise Legal, I have no convincing evidence before me to substantiate that allegation; in any event, I do not accept that as good grounds for reconsideration in the circumstances of this case and given the 2nd respondent's lack of credibility; if there is any substance to that allegation, there are other avenues open to the 2nd respondent to seek redress. The 2nd respondent had ample opportunity to prepare for and attend the hearing to determine remedy and chose not to do so.

Conclusion

15. Rule 5 of the Rules of Procedure provides that the Tribunal can extend any time limit specified in the Rules. I do not exercise my discretion to do so in this case as the 2nd respondent has not satisfied me that it would be in the interests of justice to do so.
16. However, even if I had extended time to allow the application to proceed, I would have refused it for the reasons given above. The 2nd respondent had notice of the hearing and chose not to participate. I consider there is no reasonable prospect of my remedy judgment being varied or revoked on a full reconsideration, and the 2nd respondent's application for reconsideration is therefore refused.

Employment Judge Howard

DATE 5th December 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

13 December 2019

FOR THE TRIBUNAL OFFICE

Schedule of Claims

2413383/2018	Ms M Whatmough
2413384/2018	Ms A Skalova
2413385/2018	Mr P McConville
2413386/2018	Ms S Lindley-Cross
2413387/2018	Ms K Pennill
2413388/2018	Ms L Tobjaszova
2413389/2018	Ms NK Domanczyk
2413390/2018	Ms A Critchley
2413391/2018	Ms C Chiriac
2413392/2018	Ms E Gorolova
2413393/2018	Ms Z Lewandowska
2413394/2018	Ms A Gorolova
2413395/2018	Ms A Jonasova
2413396/2018	Mr J Rogers
2413397/2018	Mr D Miklos
2413398/2018	Ms I Tonkova