



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr H Bouheniche

**Respondent:** Commissioners for Her Majesty's Revenue and Customs

**Considered at:** Chambers – North Shields    **On:** Monday 27 January 2020

**Before:** Employment Judge Shore

## RECONSIDERATION OF A JUDGMENT

1. By an email dated 27 December 2019, the claimant sought an extension of time to enable him to lodge an application for reconsideration of my Judgment and Reasons in this matter dated 9 December 2019, which was sent to the parties on 13 December 2019.
2. The provisions for reconsideration of a Judgment are set out in Rules 70, 71 and 72 of The Employment Tribunals Rules of Procedure, contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, which state:

### *RECONSIDERATION OF JUDGMENTS*

#### ***Principles***

- 70.** *A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.*

#### ***Application***

- 71.** *Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*

**Process**

*72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*

*(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

*(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.*

3. The application for an extension of time was made in time, but there was no evidence that it had been served on the respondent. The matter was placed before an employment judge, who asked the administration to write to the claimant on 2 January 2020 to advise him that the respondent had not been served with a copy of the application. His response was that he receiving the judgment during the Christmas festivities, so could not get legal advice to formalise the grounds for the reconsideration application. It was pointed out to the claimant that he had still not provided proof that the respondent had been served with the application. He replied on 8 January to say that he thought he had copied the respondent in on his email of 6 January, but provided no proof. The tribunal wrote to the claimant again on 9 January and reminded him that his application could not be considered until he had proved he had sent a copy to the respondent.
4. He responded on 9 January 2020 by saying that the respondent did not get his correspondence because he had sent it "under Bcc by mistake". On 13 January 2020, I was asked to deal with the matter. I asked the tribunal to check with the respondent to see if it had received the claimants' application and ask the claimant for copies of the emails he had sent to the respondent from his sent

items folder, which would show if it had been copied in. A letter in those terms was sent to the claimant and copied to the respondent's representative on 14 January 2020. The respondent's representative confirmed it had been copied in to the claimant's email of 6 January, but had no record of his email of 27 January. The claimant responded on 20 January 2020, saying his email was not working properly.

5. It is now exactly a month since the claimant made his application for extension. In that time, he has not indicated any details whatsoever what his grounds for reconsideration are or indicated that he has taken any steps to seek the legal advice he said he needs. I find that the claimant has failed to show on the balance of probabilities that his application for extension of time to apply for reconsideration was served on the respondent before the deadline for making the application for reconsideration itself had expired. I find that the excuse that he received the judgment and reasons on 13 December 2019 is no reason for him not to have obtained advice before the Christmas holidays and that he has not indicated that he has yet sought such advice. The Rules impose a tight time deadline for a reason. I therefore refuse the application for reconsideration.
6. In the alternative, when a reconsideration takes place, an employment judge may dispense with a hearing if they consider that it is not necessary in the interests of justice (r 72(2)). I find that, given that the claimant's application contained no details of what grounds he was going to pursue and that he has provided no reasons since the time limit expired, there is no reasonable prospect of the original Judgment being revoked or varied, so the application for reconsideration is refused.

**EMPLOYMENT JUDGE SHORE**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON  
27 January 2020**

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