



EMPLOYMENT TRIBUNALS

Claimant: Mr K Gad

Respondent: Leeds City Council

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The application is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The claimant presented a claim for unfair dismissal to the Tribunal on 11 October 2019. A notice of hearing was sent to the parties on 16 October 2019 together with case management orders. The hearing was listed for 5 February 2020. The claimant failed to comply with the case management orders.
2. On 7 January 2020 the claimant sent an email to the Tribunal requesting a postponement of the hearing and indicating that he would be out of the country from 19 February 2020. On 10 January 2020 the Tribunal wrote to the claimant indicating that Employment Judge Maidment directed that the matter had been listed for hearing on 19 October 2019 and requiring evidence of the claimant's travel arrangements showing when the booking was made.
3. On 23 January 2020 the respondent wrote to the Tribunal indicating that the claimant had not complied with the case management directions and had not made an application to extend the time limit. The respondent's representative, Jenny Beaumont, had been corresponding with the claimant and there was no good reason why he should not have complied with the directions in the case.
4. On 28 January 2020 an order was made that, unless by 2pm on 31 January 2020 the claimant complied with the case management orders in the Tribunal's letter of 16 October 2019 and replied to the Tribunal's letter dated 10 January 2020 the case was dismissed without further order.
5. On 31 January 2020 at 2:39pm the claimant sent an email to the Tribunal providing details of his flight dates indicating that he had left the country on 10 January 2020 and would return on 18 February 2020. The travel agency information indicated that the confirmation date was 18 December 2019.

6. Also on 31 January 2020 Jenny Beaumont, the respondent's representative, wrote to the Tribunal confirming that she had not received the claimant's witness statement and, therefore, the claimant had failed to comply with the case management order of 16 October 2019 and the unless order of 28 January 2020 and it was assumed that the claimant's case was struck out and the hearing would not proceed.

7. There is, within the Tribunal file, a letter from the claimant to the respondent's representative dated 27 January 2020 which purports to include a witness statement. However, the respondent indicates that this was not received by the respondent until 4 February 2020.

8. On 4 February 2020 it was ordered that the hearing fixed for 5 February 2020 was vacated.

9. On 14 February 2020 the Tribunal wrote to the claimant indicating that Employment Judge Shepherd asked for his comments on when he said he sent his witness statement to the respondent. A response was required by return. No response was received.

10. On 26 February 2020 a judgment was made that the claimant, having failed to comply with the terms of an unless order sent to the parties on 25 January 2020. The claim was dismissed.

11. The claimant requests that the judgment be reconsidered. He states that he believes his been disadvantaged at the outset during this claim due to a few factors as follows:

"1. The first being that the Tribunal were sending emails for my attention, to the wrong email address as evidenced by Jennie Beaumont's email dated 20/1/20.

2. I was abroad between the dates of January 18 to February 18 and have had difficulty accessing emails which affect my ability to keep abreast of emails and played a part in my error of not submitting the witness statement as per the unless order.

3. In light of the above I request, if there is any provision in such situations like this, to proceed with the claim or to resubmit it.

As a lay person, this whole process is new, and daunting and this has and continues to have a negative effect on my mental health.

I concede that the unless order was breached, but it was breached for the reasons stated above. I therefore make this request for the judgment to be reconsidered due to what I feel are exceptional circumstances."

12. The respondent provided comments. It was submitted that the claimant has not been disadvantaged. The emails that were sent to the wrong address by the Tribunal were not due to an error in part of the Tribunal. It was due to an error on the part of the claimant in that he had provided the incorrect email address on his form ET1. He had been in contact with the respondent and was aware of the orders and directions in the case. The claimant chose to travel abroad despite being aware of the final Tribunal hearing and the directions. No witness statement was forthcoming until 4 February 2020, four days after the last date for

compliance on the unless order. It was also pointed out that the claimant had still not complied with the Tribunal's request for comments as to when he said he had provided his witness statement.

13. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides as follows:

- "70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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.
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.
- 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."

14. I have considered this case carefully. The claimant failed to comply with the unless order. He has also failed to comply with case management orders on numerous occasions. He has not replied to correspondence and he arranged to be out of the country when he was aware of the date of the final hearing and that there were orders that should be complied with. He provided his witness statement late and by email during the time he was abroad. He was not disadvantaged because of the incorrect email address he had provided on his application to the Tribunal as it is clear that he was subsequently engaged in correspondence with the Tribunal and the respondent.

15. The claimant has repeatedly failed to comply with case management orders. I am not satisfied that he has been disadvantaged by the Tribunal or the respondent.

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He has caused the Tribunal and the respondent substantial time and expense. It is not in the interests of justice for the judgment to be reconsidered.

16. I have reached the view that, in the interests of justice and in accordance with the overriding objective, a hearing is not necessary. Both parties have had sufficient and reasonable opportunity to provide representations. There is no reasonable prospect of the judgment being varied or revoked and the application for a reconsideration is refused.

Employment Judge Shepherd

11 March 2020.