



EMPLOYMENT TRIBUNALS

Claimant: Mr S Lasdas

Respondents: Vanquis Bank Plc (1) Rethink Group Ltd (2)

JUDGMENT

The claimant's application of 25 June 2020 for reconsideration of the judgment which was sent to the parties on 22 June 2020, is refused under rule 72 of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. On 25 June 2020 the claimant made a written request to review the strike out judgment. I have treated this as a reconsideration application under rule 70.
2. Under the Employment Tribunal Rules of Procedure 2013 an application for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal may "reconsider any judgment where it is necessary in the interest of justice to do so" and upon reconsideration the decision may be confirmed, varied or revoked.
3. Rule 72 provides that an Employment Judge should consider the application to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal which heard it.
4. Under the 2004 rules prescribed grounds were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds, which were that a decision was wrongly made as a result of an administrative error, a party did not receive notice of the hearing, the decision was made in the absence of a party, or that new evidence had become available since the hearing

provided that its existence could not have been reasonably known of or foreseen at the time. In Outasight VB Ltd v Brown UKEAT/0253/14/LA the EAT confirmed that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).

5. The claimant seeks a reconsideration on the basis of the judgment of the Court of Appeal in Consignia plc v Sealy [2002] EWCA Civ 878 to contend that the Civil Procedure Rules apply to his case so that the payment for the deposits which he sent in the post on 27 May 2020 should be deemed to have been received 2 days later on 29 May 2020 and was therefore made within the specified time limit of 1 June 2020.
6. I have considered Consignia and find that there is no reasonable prospect that it applies to the claimant's case.
 - (1) Consignia concerned the factfinding process a Tribunal is required to conduct when applying section 111(2)(b) of the Employment Rights Act 1996 ("ERA"). This "escape clause" provides that a Tribunal will have jurisdiction to consider an unfair dismissal complaint which is presented outside the relevant time limit if it concludes, on the facts of a particular case, that it had not been reasonably practicable for the claimant to have presented the complaint in time.
 - (2) In its judgment, the Court of Appeal held that when conducting a factfinding into what was reasonably practicable for the purposes of section 111(2)(b) the fact that a claim form was sent before the time limit expired and would, in the ordinary course of events, have arrived before this period ended were relevant considerations. The "ordinary course of events" was to be decided with reference to Civil Procedure Rule 6 i.e. in the case of a document served by first class post, it is deemed to be served on the second day after it was posted.
 - (3) I find that this is not relevant to the claimant's case. This is because section 111(2)(b) ERA is to be contrasted with rule 39(4) of the 2013 Rules which contains no such "escape clause" and does not allow any discretion to a Tribunal. Accordingly, under rule 39(4) the automatic effect of a failure to pay a deposit by the date specified is that the allegation or argument to which the deposit order relates is struck out.
7. For these reasons, the claimant's application for reconsideration has no reasonable prospects of success and it is refused under rule 72(1).

Employment Judge Khan
26/06/2020

JUDGMENT SENT TO THE PARTIES ON
27/06/2020

FOR THE TRIBUNAL OFFICE