



EMPLOYMENT TRIBUNALS

Claimant: Mr L Phythian
Respondent: Toomey Renno Limited

JUDGMENT

The Claimant's application dated **28 May 2020** for reconsideration of the judgment sent to the parties on **12 May 2020** is refused.

REASONS

1 There is no reasonable prospect of the original decision being varied or revoked, for the following reasons.

2 This decision is written in response to an application from the Claimant's solicitors, sent by email on 13 July, attaching a letter dated 28 May 2020.

3 The letter dated 28 May 2020 is brief. The contents are as follows:

"We write further to our emails dated 20 and 27 May 2020.

Please take this as an application to vary suspend or set aside the decision as per R.29 at an oral hearing.

We will support this application with a witness statement 28 days before the hearing is listed to allow the Respondent to reply and hopefully agree that the decisions should be set aside without a hearing."

4 In summary, the background to the current application on behalf of the Claimant is as follows.

5 Employment Judge Hyde made a judgment striking out the Claimant's claim. This judgment was sent to the parties on 11 July 2019. It is a detailed judgment. Amongst the contents is are reasons given for striking out the claim, including those set out at paragraph 42. There she stated that the Claimant had failed to comply with the basic requirement in litigation of setting out with sufficient clarity what the claim was about despite numerous attempts by the

Tribunal to get his representatives to do so. She subsequently refused an application to reconsider her judgment on the basis that it had no reasonable prospects of success, giving her reasons for this.

6 The Respondent's solicitors made an application for costs against the Claimant. The application was listed for hearing on 20 March 2020.

7 I conducted the hearing on 20 March 2020 and gave a full reasoned decision for my orders to refuse the Claimant's application to postpone the costs hearing; and to order the Claimant to pay £2000 costs. This decision, although signed by me on 8 April 2020, was not sent to the parties until 12 May 2020.

8 By email sent to the Tribunal on 20 May 2020 the Claimant's solicitors requested that the request that any judgment that had been made be stayed (explaining that they were unsure whether a judgment and order had been given).

9 By email dated 27 May the Claimant's solicitors stated that they had received the judgment by post today; asked for 41 days to be given for the Claimant to decide how best to proceed; and asked for the judgment be stayed until 21 August 2020. In neither letter were any reasons given for why the judgment be stayed, other than to allow the Claimant time to decide how best to proceed.

10 By letter dated 13 July 2020, the Employment Tribunal wrote to the parties at my direction, giving reasons for my refusal to grant a stay.

11 On 13 July 2020 the Claimant's solicitors sent an email attaching the letter dated 28 May referred to at paragraph 3 above. Having looked through the Tribunal's file, this is the first time that the letter dated 28 May has found its way onto the file.

12 I am assuming, although it is not made clear by the Claimant's solicitors, that they are asking me to vary, suspend or set aside the order for costs that I made.

13 Although I expressed the order for costs as an order, by virtue of Rule 1(3)(b) of the Employment Tribunals Rules of Procedure 2013 a decision that finally determines costs is treated as a judgment. I am, therefore, treating the letter dated 28 May 2020 as being an application for the judgment being reconsidered in accordance with Rules 70-72 of the Tribunal's Rules.

14 Rule 70 provides for a judgment to be reconsidered where it is necessary in the interests of justice to do so. This is a broad discretion, although one that needs to be exercised judicially in all the circumstances, having regard not only to the interests of the party seeking the reconsideration, but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation. The Tribunal is also required to consider the overriding objective set out in Rule 2 of the Rules.

15 Rule 71 provides that an application for reconsideration shall be presented in writing and copied to the parties within 14 days of the date on which the written

reasons were sent to the parties and shall set out why reconsideration of the decision is necessary.

16 The application is out of time, even if it was received by the Tribunal on 28 May. I note that no reasons have been given as to why time limits should be extended. If the letter was sent to the Tribunal on 28 May, rather than for the first time on 13 July, I might well have extended time for making the application, on the basis of the Claimant's solicitors assertion that they had only received the judgment on 27 May.

17 The requirement to give written reasons for why reconsideration is necessary is mandatory. The Claimant's solicitors have not complied with it. It is one of a long line of failures to comply with requests and orders of the Tribunal which were set out by Employment Judge Hyde in her judgment striking out the Claimant's claim. Any further attempt to set out reasons for reconsideration would be woefully out of time and I would be unlikely to accede in the circumstances to extending the time limit.

18 I, therefore, consider, as provided for in Rule 72(1) that the application has no reasonable prospect of success.

19 I also add that I find it difficult to envisage any grounds on which I would have granted the application, had reasons been given. I understand that the Claimant's solicitors have lodged an appeal against Judge Hyde striking out of the claim, but that the appeal was lodged many months of time; and, additionally, appears to be based on a misunderstanding of what needs to be signed by a judge and what can be sent by letter at his or her direction. As regards my order for costs (and refusal to postpone the costs hearing) the correct means of challenge, if it was wrong in law, would be by way of appeal. As noted above, the interests of justice involves justice to both parties and there needs to be finality in litigation.

Employment Judge **Goodrich**
Date: 26 August 2020