



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Juliet Linsley

**Respondent:** Spire Kool Limited

## JUDGMENT ON APPLICATION FOR RECONSIDERATION

Employment Tribunals Rules of Procedure 2013

The Claimant's application for reconsideration of the Judgment sent to the parties on 10 January 2020 is refused.

## REASONS

1. Default Judgment under Rule 21 in this matter was sent to the parties by on 10 January 2020. By email of 8 September 2020 the Claimant has indicated that she has encountered difficulties enforcing that judgment and wishes to enquire as to whether the Judgment can be amended to name Jeff Kirby personally as the Respondent rather than Spire Kool Limited, the limited company of which he was a director. I take this to be an application for reconsideration under Rule 70 of the Tribunal Rules.
2. Rules 70-73 of the Tribunal Rules provides as follows:-

### **70. Principles**

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.

### **71. Application**

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. Process**

(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.

## **73. Reconsideration by the Tribunal on its own initiative**

Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

3. The Tribunal thus has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Under Rule 72(1), I must dismiss the application if I consider that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, I must (under Rule 72(2)) consider whether a hearing is necessary in the interests of justice to enable the application to be determined. A hearing would, unless not practicable, be a hearing of the full tribunal that made the original decision (Rule 72(3)). If, however, I decide that it is in the interests of justice to determine the application without a hearing under Rule 72(2), then I must give the parties a reasonable opportunity to make further written representations.
4. In deciding whether or not to reconsider the judgment, the authorities indicate that I have a broad discretion, which *“must be exercised judicially ... having regard not only to the interests of the party seeking the review or reconsideration, but also to 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”* (*Outsight v Brown* [2015] ICR D11). The Court of Appeal in *Ministry of Justice v Burton* [2016] ICR 1128 also emphasised the importance of the finality of litigation (ibid, para 20).

5. That said, if an obvious error has been made which may lead to a judgment or part of it being corrected on appeal, it will generally be appropriate for it to be dealt with by way of reconsideration: *Williams v Ferrosan Ltd* [2004] IRLR 607 at para 17 *per* Hooper J (an approach approved by Underhill J, as he then was, in *Newcastle upon Tyne City Council v Marsden* [2010] ICR 743 at para 16).
6. It may also be appropriate for a judgment to be reconsidered if a party for some reason has not had a fair opportunity to address the Tribunal on a particular point (*Trimble v Supertravel Ltd* [1982] ICR 440, and *Newcastle-upon-Tyne City Council v Marsden* *ibid* at para 19).
7. However, a mere failure by a party (in particular, but not only, a represented party) or the Tribunal to raise a particular point is not normally grounds for review: *Ministry of Justice v Burton* (*ibid*) at para 24.
8. The normal time limit for submitting a reconsideration application is 14 days under Rule 70. However, the Tribunal has power under Rule 5 to extend that time limit. This is a broad discretion to be exercised in accordance with the overriding objective: *Gosalakkal v University Hospitals of Leicester NHS Trust* (UKEAT/0223/18/DA) *per* HHJ Richardson at para 10.
9. In this case the Claimant has applied well outside the normal 14-day time limit for an application and, although she has acted swiftly on the suggestion from the Enforcement Office about contacting the Tribunal, I see no reason to extend time because there is no merit in the application.
10. The Tribunal's jurisdiction, both in relation to unlawful deductions from wages claims under ss 23-27 of the Employment Rights Act 1996 (ERA 1996) and for breach of contract under the Employment Tribunals (Extension of Jurisdiction) Order 1992, is in respect of claims against an individual's employer. The Claimant brought the claim against 'Spire Kool' and referred to Spire Kool as being her employer. Although she indicated that Jeff Kirby (CEO) had promised to pay compensation for late salaries to all employees, there was no suggestion in the material supplied by the Claimant that by doing so Mr Kirby had intended personally to take over the employment of those employees. The normal position is that the limited company will be the employer of employees. The Claimant has adduced no evidence to show that the normal position did not apply in her case. I therefore consider there is no prospect of the original decision being varied or revoked and I dismiss the application for reconsideration.

**Case Number: 2202109/2019**

**Employment Judge Stout**

23/09/2020

JUDGMENT SENT TO THE PARTIES ON

23/09/2020

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE