



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Gaskell

**Respondent:** TOTO Energy

## JUDGMENT

The claimant's application dated 15 September 2020, which has been considered as an application for reconsideration of the judgment sent to the parties on 27 August 2020, is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The reason for the Judgment provided was that "The claimant has failed to make representations in writing, **or has failed to make sufficient representations**, why [the claim should not be struck out because it has not been actively pursued] or to request a hearing" [my emphasis added].
2. Whilst the application dated 15 September 2020 confirms that an email was sent on 25 June 2020 and provides the attachments that were provided at that time, neither the email nor the attachments demonstrate that steps have been taken to actively pursue the claim since November 2019, nor the outcome of the application for consent made to the Administrator.
3. The Tribunal's letter of 19 November 2019 explained that consent of the Administrator or consent of the Court was required for the claim to be pursued. It also stated that the claimant would be asked at the time when the six month stay expired whether he had applied to the Administrator or the court for permission and, if so, what had been the result;

4. The claimant was warned on 24 June 2020 that strike out was being considered. He was provided with the opportunity to say why this should not be done, and it was expressly explained to him that when responding he should say whether an application to the Administrator had been made and **what the result was**.
5. The claimant's email of the 25 June 2020 and the attachments provided do evidence an application to the Administrator for consent to pursue his claim made on 20 November 2019, but after that date provide no evidence of any response to the application nor any further steps being taken to pursue the application.
6. The Judgment sent to the parties on 27 August 2020 was made on the basis that the claimant had failed to make sufficient representations, not that the claimant had failed to provide any response at all.
7. The application of 15 September 2020 does not provide any new information which would result in the decision being reconsidered. There is no evidence of the application to the Administrator being pursued since 20 November 2019, nor is there any evidence that consent has been given by the Administrator (or the Court).
8. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70). The Court of Appeal in **Ministry of Justice v Burton [2016] EWCA Civ 714** has emphasised the importance of finality, which militates against the discretion being exercised too readily.
9. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
10. Preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

Employment Judge Phil Allen

13 November 2020

JUDGMENT SENT TO THE PARTIES ON

27 November 2020

FOR THE TRIBUNAL OFFICE