



THE EMPLOYMENT TRIBUNALS

Claimant: ZZ

Respondent: YY

Interested Party: VV Council

Considered at: Chambers – North East Region **On:** Wednesday 15 January 2020

Before: Employment Judge Shore

RECONSIDERATION OF A JUDGMENT

1. By two emails dated 20 and 22 December 2019, the claimant sought reconsideration of my Judgment in this matter dated 9 December 2019, which was sent to the parties on 13 December 2019.
2. The provisions for reconsideration of a Judgment are set out in Rules 70, 71 and 72 of The Employment Tribunals Rules of Procedure, contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, which state:

RECONSIDERATION OF JUDGMENTS

Principles

70. *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.*

Application

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.

Process

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.

(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.

3. The application for reconsideration was made in time. It was brought to my attention on 23 December 2019, and I requested the observations of the respondent and interested party by 8 January 2020 in a letter of 23 December 2019 that was sent to all parties. The comments of the interested party were received by an email timed at 15:50pm on 8 January 2020. The comments of the respondent were received by email timed at 16:26pm on 9 January 2020.
4. In an email timed at 06:01am on 9 January 2020, the claimant's representative submitted that no response to my request for comments on the application for reconsideration had been received from either the respondent or the interested party by midnight on 8 January 2020. That submission was factually correct in respect of the respondent, but factually wrong in respect of the interested party. The email went on to point out there previous occasions on which the respondent had failed to comply with orders of the Tribunal on time. An application was therefore made for an order to continue the reconsideration without taking into account any submissions made by the respondent on the grounds that they would

be submitted late (which they were). I was asked to exercise the power to make case management orders under Rule 29.

5. Whilst the application has some merit, I am guided by the overriding objective, which requires the Tribunal to deal with cases fairly and justly. The respondent was one day late in submitting comments. Today is the first opportunity I have had to consider the application for reconsideration. I understand the annoyance and frustration of the claimant at the late comments from the respondent, but cannot see that the claimant's position would be adversely affected by my considering the respondent's comments. Both parties are entitled to a fair and just hearing and I do not find that the injustice to the claimant in refusing the application is greater than the injustice to the respondent if I was to deny it the opportunity to comment on the application. The respondent's representative said that it had IT issues that stopped it making comments. I find that it would not be proportionate or a saving of time or cost to seek further information from the respondent about its IT issues, which would no doubt lead to further discussion by email. The claimant's application is refused.
6. When a reconsideration takes place, an employment judge may dispense with a hearing if they consider that it is not necessary in the interests of justice (r 72(2)). I find that given that the claimant's application is seventeen pages long, I do not consider that a hearing is required in the interests of justice, particularly as the claimant's application anticipates "...an application in due course to the EAT on findings of an error of law with regards to WTR and Tribunal Rules 2013 and finding of fact in this case along with our humble and respectful submissions of potential bias/impartiality concerns contrary to the Bangalore Principles 2002..." (sic).
7. On consideration of the application and the submissions made by the respondent and the interested party, I find that there is no reasonable prospect of the original Judgment being revoked or varied, so the application for reconsideration is refused.
8. I make this decision, because I find that some of the points made by the claimant are irrelevant, some are factually incorrect, some are legally incorrect and some are a challenge to findings of fact on the evidence I heard. In effect, the claimant disagrees with the findings I made, which he is entitled to do, but that fact does not mean that the application has a reasonable prospect of success.

EMPLOYMENT JUDGE SHORE

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
15 January 2020
JUDGMENT SENT TO THE PARTIES ON
21 January 2020**

Case Number: 2503212/2018

AND ENTERED IN THE REGISTER

G Palmer

FOR THE TRIBUNAL

Judgment anonymised pursuant to rules 50(1) and (3)(b) of the Employment Tribunals Rules of Procedure 2013 and Art 8 of the European Convention on Human Rights, by Order of the Tribunal signed on 19 January 2021.

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