



EMPLOYMENT TRIBUNALS

Claimant

Miss K Glowienko

v

Respondent

BJP Pufi Ltd

JUDGMENT ON RECONSIDERATION

The Judgment of the Employment Tribunal is that there is no reasonable prospect of the judgment of 15 March 2021 being varied or revoked. The claimant's reconsideration application dated 16 March 2021 stands dismissed.

REASONS

1. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative 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 judgment may be confirmed, varied or revoked.
2. An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record was sent to the parties.
3. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means 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.
4. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations. The obligation includes:
 - *Ensuring that the parties are on an equal footing.*
 - *Dealing with cases in ways which are proportionate to the complexity and importance of the issues.*
 - *Avoiding unnecessary formality and seeking flexibility in the proceedings.*
 - *Avoiding delay, so far as compatible with proper consideration of the issues.*

- *Saving expense.*

5. The procedure upon a reconsideration application is for the Employment Judge that heard the case or gave the judgment in question to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interest of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
6. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application is to act as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be considered at a reconsideration hearing.
7. In this case, I issued a judgment on 15 March 2021 (*the judgment*). I struck out the claimant's claim upon the basis that the claimant had failed to comply with an order (*the deposit order*) made by Employment Judge Wade on 21 January 2021 at a hearing held on that day. This was followed up by an order which was sent on 25 January 2021. The claimant was ordered to pay a deposit as a condition of being permitted to pursue her three claims. The amount of the deposit ordered to be paid was in the sum of £100 for each allegation.
8. In an email dated 16 March 2021, the claimant's solicitor applied for reconsideration of the judgment upon the basis that the deposit order was not received by email or by post.
9. The deposit order was sent to the claimant's solicitor by email. The email address to which it was sent was matthew@optimalsolicitors.com. This is the email address supplied by the claimant's solicitor when he submitted the claim form and went on the record as acting for the claimant and is the email address used by him when he made his reconsideration application upon 16 March 2021.
10. Plainly, the reconsideration application as made within the prescribed time limit. However, it is not properly instituted as it appears not to have been copied to the respondent.
11. That notwithstanding, I am able to deal with the application without the respondent's input. The issue is whether the application enjoys reasonable prospects of the original decision or judgment being varied or revoked.
12. The claimant's solicitor attended the hearing held on 21 January 2021. He joined the hearing, which had been listed to commence at 2:00pm, at 2:30pm. Therefore, he knew that the claimant had been ordered to pay a deposit. When he joined the hearing, Employment Judge Wade told him that she had made the deposit order on the papers.
13. An email confirming that the deposit order had been made was sent by the Employment Tribunal's administration to the claimant's solicitor at the email address referred to in paragraph 9. It was sent on 25 January 2021 at 09:02.
14. I am satisfied that it was properly served. There is no record of it not having been received by the claimant's solicitor. This is sufficient to dispose of the reconsideration application. There is no reasonable prospect of the judgment being varied or revoked. The deposit order was made on 21 January 2021. It was served on 25 January 2021.

The claimant failed to comply with it. It is not in the interests of justice to reconsider the judgment in the circumstances. To allow the claimant a second opportunity would be unjust to the respondent and would infringe the principle that it is in the public interest that there should be finality in litigation.

15. Further, the claimant's solicitor was aware that the deposit order had been made. Employment Judge Wade told him so on 21 January 2021. No action was taken by the claimant's solicitor after 21 January 2021 to enquire as to the whereabouts of the deposit order. He knew or ought to have known during January and February 2021 that the claimant was required to pay a deposit and that a failure so to do would result in the striking out of the claim. Yet he appears to have taken no steps to ascertain the whereabouts of the deposit order (if it had not been received) or otherwise protect the claimant's position. Indeed, that he did not take any such steps reinforces my judgment that the deposit order had been received but was not acted upon.
16. In the circumstances, the reconsideration application is refused.

Employment Judge Brain

7 April 2021