



EMPLOYMENT TRIBUNALS

Claimant

Mr P Strickland

Respondents

Kier Infrastructure and Overseas Limited
Kier Dubai LLC

JUDGMENT ON RECONSIDERATION

Rules 70 - 73 of the Employment Tribunal Rules of Procedure 2013

Upon the claimant's application made by email and accompanying document of 22 December 2020 to reconsider the reserved judgment sent to the parties on 10 December 2020 under Rule 71 Employment Tribunal Rules of Procedure 2013 and without a hearing:-

The application to reconsider is refused as there is no reasonable prospect of that judgment being varied or revoked.

REASONS

Introduction

1. As can be seen from the case numbers above, this case has a long history. The background is set out in the judgment referred to above as well as in other judgments and case management summaries. It will not be repeated here. The claimant states that some matters are before the EAT but I am not sure what they might be.
2. In the reserved judgment sent to the parties on 10 December 2020, I confirmed the outcome which had been discussed at the remedy hearing on 17 November 2020, namely that the claimant's damages under his breach of contract claim would be limited to £25,000. I also refused an application for costs made by the respondent in 2014 with respect to a postponed hearing in November 2013.
3. The claimant's letter dated 22 December 2020 is somewhat lengthy as has been the case throughout this litigation. He provides a summary, arguing that there are two respondents and that he had three employment

contracts. In essence he argues that the cap in paragraph 10 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 of £25,000 contains the words “*relating to the same contract*” and that is of significance in his case. He submits that this means the limit is 3 x £25,000 and, as the total amount to which he was entitled was £52,997.42, he is entitled to up to £75,000. He also asks for reconsideration of other aspects of the judgment, stating the award should be grossed up for tax purposes; that an amount of AED60,000 should be added for notice pay; that I should reconsider the amount awarded for relocation expenses based on the Kier Dubai LLC contract; that there should be sums for flights, bonus and interest and other matters under the Keir Dubai LLC contracts.

4. The respondents made comments on the claimant’s application. In summary, the respondents say that the argument about there being three employment contracts has never been raised before, either in arguments drafted on the claimant’s behalf by leading counsel earlier in these proceedings or at any other time.

Rules

5. The relevant employment tribunal rules for this application read as follows:

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.

6. In essence, my task is to consider whether a reconsideration is in the interests of justice. Where I consider there is no reasonable prospect of the decision being varied or revoked, under Rule 72, the application shall be refused.

Conclusions

7. This matter was heard over three hours with judgment reserved so I could give it full consideration. There was considerable documentation and details about the various aspects of the breach of contract claim as the respondents had conceded liability for that claim. Both parties had time to make submissions and had already handed in detailed documents.
8. The application attempts to re-argue that which I have already considered and decided. The claimant is seeking to circumvent the statutory cap on breach of contract claims in the employment tribunal after the decision was made. He made no such suggestion during the hearing and it is not sustainable. There may have been a dispute about the identity of the employer which is why there are two named respondents but that makes no difference to the outcome for the claimant. He was not working simultaneously for more than one employer.
9. The claimant has found it difficult to accept that this litigation appears to be finally reaching the end. Although I appreciate that he had not understood that the cap would apply, that is the law. Indeed, given his detailed

involvement in this case and the time he has expended on looking into every aspect, it should have been something that he had discovered as he knew that the hearing in November was a remedy hearing for his breach of contract claim.

10. It is not in the interests of justice to reconsider the judgment. The claimant cannot hope to convince me that he had three simultaneous contracts with two respondents. That has not been his case before and it is to his discredit that he suggests it now. It is also contrary to express findings in the earlier judgment of Employment Judge Ord of November 2014 at paragraph 104 that the claimant's employer was Kier Infrastructure and Overseas Limited.
11. There is no reasonable prospect of the judgment being varied or revoked and the application is refused.

Dated: 21/4/2021

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Employment Judge Manley

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**Judgment sent to the parties on
5/5/2021**
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**N Gotecha
For Secretary of the Tribunals**