



EMPLOYMENT TRIBUNALS

Claimant
Mr A Shankar

and

Respondents
Genpact (UK) Limited (1)
Mr G Jackson-Smith (2)
Mr A Wadhwa (3)
Mr M Baalebail (4)
Mr D Goldup (5)

JUDGMENT ON RECONSIDERATION

Upon the Claimant's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the decisions:

- a) to accept the Respondents' response and
- b) requiring him to delete a previous (legally privileged) draft sent to him in error,

the application to reconsider is refused under Rule 72(1) as there is no reasonable prospect of the decisions being varied or revoked.

REASONS

Introduction

1. This claim has been the subject of several Preliminary Hearings (Case Management) (PHCMs) resulting in decision and/or case management orders being issued. I shall not repeat them in detail here. The salient part of the decisions for these purposes is to be found at paragraph (3) of the Order of 9 March 2021, in which I confirmed that the ET3 responses filed by or on behalf of the Respondents on 2 December 2020 were accepted and that the Claimant was to delete and not to refer again to the draft that had been submitted in error and which is a privileged document.

Application for reconsideration

2. After the case management summary and orders from the PHCM, which started on the morning of 2 March 2021 and continued (in the absence of the Claimant) both that afternoon and on 9 March 2021 was sent to the parties, the Claimant wrote to the Tribunal on 22 March seeking an extension of time within which to take certain steps. This included seeking a reconsideration of orders and judgments made at the PHCM on the dates above.

3. On 24 March, the Claimant submitted his written request for reconsideration of the decisions set out above. For completeness, I note that by email of 29 March, the Tribunal conveyed to the Claimant that his extension of time was granted in relation to a single point (the provision of further and better particulars of his claim). The Claimant was reminded that further progress of the case would be discussed at the open PH listed for 7 May 2021 (if the Judicial Mediation listed for 29 April did not proceed or did not produce a settlement) and not via correspondence. In the event, the JM did not proceed. On 30 March and 1 April, the Claimant repeated requests for further extensions of time; these were refused on 6 April.
4. In summary, the Claimant objects to the acceptance of the Respondents' ET3 responses because they were submitted by a person not on the record for them (Ms A Ling, a solicitor with Deloitte, but apparently formerly of Kemp Little); he contends that this is "non-representation" which he then asserts amounts to "non-presentation" of a response pursuant to Rule 21. Further, he contends that the address given on the form was incorrect and that the form should accordingly have been rejected pursuant to Rule 17; and finally, he argues that the response is insufficiently argued. He sets out a number of examples to support his contention of a lack of proper particularisation.
5. The Claimant further contends that if the response is not struck out, the decision to require him to delete the earlier document (that the Respondents say was sent in error) should be reconsidered because when the Claimant sent in two emails on 22 November 2020, the second was considered (by EJ Glennie) to amount to a request for reconsideration of his grounds of complaint; the Respondents should be subject to the same analysis; the Claimant also wishes to rely on the earlier version of the ET3 as demonstrating a change in the Respondents' position.

Rules

6. The relevant Rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

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.*

7. My task is to consider whether reconsideration of my decision to admit the ET3s on behalf of the Respondents and to require the Claimant to delete a privileged document sent to him in error 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

8. This reconsideration application was considered by me on the papers. The application repeats some of the information contained in an email sent by the Claimant before I made the decision and seeks to re-argue that which I have already considered and decided. The application provides no clear reason as to why the Claimant believes that it would be in the interests of justice to reconsider my decision.
9. The Claimant is unhappy that the Respondents have been permitted to rely on the ET3 forms and extended response submitted by them or on their behalf on 2 December 2020 and that I have ordered him to delete the document that was earlier submitted to the Tribunal in error and which was a privileged document, containing "redline" tracking from discussions

between the Respondents and their lawyer, and not to rely on that document again.

10. There is nothing in Rule 21 that requires a response to be submitted by a person who is on the record for a respondent. Rule 21 contains no concept of “non-representation” nor does any such consideration form part of the reasons for rejection of a response. There has been no suggestion by the Respondents that the document was submitted without their authorisation; on the contrary, they wish to rely on that document. The ET3 form in this case contained an address for the Respondents. I understand from the Claimant’s application that EJ Glennie subsequently altered that address at the Respondents’ request. It does not seem to me that by so acting, the Respondents have behaved in a manner contrary to Rule 17. So far as the detail of the response is concerned, the Claimant had not, as at 2 December 2020, finalised the detail of his claim. I found the response submitted on their behalf contained ample detail to understand that the Respondents wished to resist the claim. All parties have since been given time to produce comprehensive pleadings following requests both ways for further particulars.
11. So far as the earlier draft was concerned, I have already indicated in the previous order that while it is unimpressive from a professional standpoint, I am satisfied by the explanation that the Respondents’ lawyer inadvertently emailed a draft version to the Tribunal and, in addition, erroneously used the title “amended” when referring to the document. I did not make the decision in relation to the Claimant’s emails sent on the same date but in any case, he has not suggested that the circumstances were the same. I remain satisfied that the Respondents did not intend to waive privilege in disclosing the earlier draft and that the document thus disclosed must be destroyed by the Claimant and not referred to again; and I am further satisfied that this being so, the correct version of the response is the one attached to the email sent at 18.38 on 2 December 2020 by Kemp Little (“clean” version), in accordance with EJ Glennie’s order of 20 October 2020. For the avoidance of doubt, the Claimant must delete and must not refer again to the privileged draft “redline” version forwarded inadvertently to the Tribunal and to the Claimant at 16.54 on the same date.
12. There is nothing in what is now said by the Claimant which indicates that it is in the interests of justice to re-open matters. I refuse this application as there is no reasonable prospect of the decisions being varied or revoked.

Employment Judge Norris
Date: 1 May 2021
JUDGMENT SENT TO THE PARTIES ON

04/05/2021.

FOR THE TRIBUNAL OFFICE