



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Mr Saidali Khakimov

Nikko Asset Management Europe Limited

## JUDGMENT ON RECONSIDERATION APPLICATION

The Claimant's application for reconsideration of the judgment on the Claimant's application for interim relief sent to the parties on 29 April 2021 is refused.

## REASONS

### Introduction

1. Following a hearing on 26 April 2021 my reserved judgment on the Claimant's interim relief application and the Respondent's costs application was sent to the parties on 29 April 2021.
2. By email of 13 May 2021 the Claimant made an application for reconsideration of my judgment.
3. The Claimant's application appeared to be a complaint about my conduct of the hearing so I referred it to Regional Employment Judge Wade. After corresponding with the Claimant, by letter of 24 June 2021 REJ Wade notified the Claimant that the application would be dealt with as an application for reconsideration by me.

## The law

### 4. Rules 70-73 of the Tribunal Rules provides as follows:-

#### **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.

#### **73. Reconsideration by the Tribunal on its own initiative**

Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

### 5. The Tribunal thus has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Under Rule 72(1), I must dismiss the application if I consider that there is no reasonable prospect of the original decision being varied or revoked. I may, before finally determining the application, send a notice to the parties setting out my provisional views and inviting the Respondent’s submissions on the application. If I conclude that there is a reasonable prospect of the original decision being varied or revoked, I must (under Rule 72(2)) consider whether a hearing is necessary

in the interests of justice to enable the application to be determined. If, however, I decide that it is in the interests of justice to determine the application without a hearing under Rule 72(2), then I must give the parties a reasonable opportunity to make further written representations.

6. In deciding whether or not to reconsider the judgment, the authorities indicate that I have a broad discretion, which “*must be exercised judicially ... having regard not only to the interests of the party seeking the review or reconsideration, but also to 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*” (*Outasight v Brown* [2015] ICR D11). The Court of Appeal in *Ministry of Justice v Burton* [2016] ICR 1128 also emphasised the importance of the finality of litigation and that a case should not be reopened just for the purpose of further argument or exploration of the evidence (*ibid*, para 25).
7. That said, if an obvious error has been made which may lead to a judgment or part of it being corrected on appeal, it will generally be appropriate for it to be dealt with by way of reconsideration: *Williams v Ferrosan Ltd* [2004] IRLR 607 at para 17 *per* Hooper J (an approach approved by Underhill J, as he then was, in *Newcastle upon Tyne City Council v Marsden* [2010] ICR 743 at para 16).
8. It may also be appropriate for a judgment to be reconsidered if a party for some reason has not had a fair opportunity to address the Tribunal on a particular point (*Trimble v Supertravel Ltd* [1982] ICR 440, and *Newcastle-upon-Tyne City Council v Marsden* *ibid* at para 19).
9. However, a mere failure by a party (in particular, but not only, a represented party) or the Tribunal to raise a particular point is not normally grounds for review: *Ministry of Justice v Burton* (*ibid*) at para 24.

### **My decision on this application**

10. I have read the Claimant’s application carefully. The fact that I do not refer here to every point that the Claimant makes does not mean that I have not considered it.
11. I have considered whether it is in the interests of justice to review my judgment and whether there is a reasonable prospect of my judgment being varied or revoked in the light of the Claimant’s application. I consider that it is not in the interests of justice and there is no reasonable prospect of my judgment being varied or revoked in the light of the Claimant’s application. The important principle of finality in litigation should here be upheld.
12. It seems to me that the Claimant makes five main points, in respect of which I conclude as follows:-

13. *First*, he complains about my conduct of the hearing and asserts that I appeared to be biased against him. I do not agree with the Claimant's description of my conduct at the hearing, and I do not consider that anything I did could reasonably have given rise to an appearance of bias, but it is nonetheless a matter of great regret that this is how it appeared to the Claimant, and I offer the Claimant my sincere apology for any aspect of my conduct that led him to feel I was not treating him or his case with respect and care. I did listen carefully to what he had to say without bias or pre-determination.
14. *Secondly*, the Claimant complains that I got some dates and/or timing of emails wrong in my summary of facts in relation to the decision on whether to admit the late materials. I do not think I did get those matters wrong, but even if the correct dates and times are as the Claimant says they are, it is obvious it would make no difference to the outcome given my reasons for admitting the late materials.
15. *Thirdly*, the Claimant complains that I did not listen properly to what he said. However, I did my best at the hearing to understand the Claimant's arguments, and I have now read with care the 21 pages of his application for reconsideration. There is almost nothing<sup>1</sup> in there that the Claimant did not in substance say at the hearing. The Claimant's application attempts to reargue at length the matters that we covered at the hearing. I took those arguments into account then and it is not the purpose of a reconsideration application to have a 'second bite of the cherry' in this way. The reasons for my decisions on all parts of his case are set out in the Reserved Judgment (as I explained to him at the hearing they would be).
16. *Fourthly*, the Claimant complains that I did not make sufficient adjustment for his alleged disability. Although the Claimant's disability is not admitted by the Respondent, I took full account of it in the way that I conducted the hearing, as is apparent from the judgment. I did my best to adapt the hearing to ensure that the Claimant was not at a disadvantage. The Claimant suggests that because we took each stage of Mr Smith's submissions separately we did not continue trying to speak slowly step by step and in short sentences allowing him time to digest and take notes where necessary. But we did. There is no inconsistency there between what we said we would try to do and what we did. Apart from the point when the Claimant said that he had not understood my reasons for permitting the Respondent to rely on the late materials (when I did say, in order to proceed with the hearing, that the reasons would be set out in writing in the judgment), he did not say that he did not understand what was being said (although he disagreed with a lot of it). As described in the judgment, I tried to guide him through the issues on

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<sup>1</sup> The only point that struck me as 'new' was that the Claimant in his application for reconsideration emphasises that in his Second Claim he was specific that the "*new claim*" he was bringing was "*Unfair and Discriminatory Dismissal per Sections 94(1) and 126 ERA 1996*". That point, however, merely reinforces the conclusion that I was correct in my conclusion that the Second Claim was a claim for unfair and discriminatory dismissal and did not include a claim that his dismissal was automatically unfair under s 103A because the reason for it was that the Claimant had made protected disclosures.

which he needed to address me. I therefore consider that the Claimant had a fair opportunity to address me at the hearing.

17. *Fifthly*, the Claimant makes a specific complaint about not being given sufficient reading time for the 'late' documents. After the morning break I was not aware that the Claimant had not completed the reading he wanted to do or that he had spent the whole break looking for the other emails he wanted to submit. He did not ask for more time to read. In any event, I do not see that it would have made any difference if he had more time, since he has now had more time and in 21 pages of application for reconsideration he does not refer to anything of significance that he did not say at the hearing. Again, I consider the Claimant had a fair opportunity to address me at the hearing.
18. I therefore consider that there is no reasonable prospect of my judgment being varied or revoked and the application for reconsideration is refused.

## **CASE MANAGEMENT ORDER**

- (1) The Claimant's witness statement that he intended to send in response to paragraph (5) of the Order sent to the parties on 29 April 2021 did not reach the Tribunal. The Claimant must re-send it within 7 days of the sending of this judgment to the parties. If he does not do so, the costs application will be finally determined without reference to it.

Employment Judge Stout  
1 July 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

...03/07/2021...

FOR THE TRIBUNAL OFFICE