



EMPLOYMENT TRIBUNALS

Claimant: Mr S Lasdas

Respondents: Vanquis Bank Plc (1)

Rethink Group Ltd (2)

JUDGMENT

The claimant's application of 27 and 28 June 2020 for reconsideration of the judgment, which was sent to the parties on 22 June 2020, is refused under rule 72 of the Employment Tribunals Rules of Procedure 2013.

REASONS

The law

1. Under the Employment Tribunals Rules of Procedure 2013 an application for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a tribunal may "reconsider any judgment where it is necessary in the interest of justice to do so" and upon reconsideration the decision may be confirmed, varied or revoked.
2. Rule 72 provides that an Employment Judge should consider the application to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked the application shall be refused. This includes where substantially the same application has been made and refused unless there are special reasons which militate against this. Otherwise it is to be decided, with or without a hearing, by the tribunal which heard it, unless that is not practicable. Before making such a determination the tribunal is required to send a notice to the parties setting a time limit for any response and seeking their views on whether the application can be determined without a hearing. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

3. Under the 2004 rules prescribed grounds were set out, plus a generic “interests of justice” provision, which was to be construed as being of the same type as the other grounds, which were that a decision was wrongly made as a result of an administrative error, a party did not receive notice of the hearing, the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. In Outasight VB Ltd v Brown UKEAT/0253/14/LA the EAT confirmed that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).
4. The Court of Appeal in Ministry of Justice v Burton [2016] EWCA Civ 714 has since provided the following guidance on the approach to be taken by a tribunal when exercising its discretion under rule 70 on the ground of ‘interests of justice’: (1) the discretion must be exercised in a principled way; (2) there must be an emphasis on the desirability of finality, which militates against the decision being exercised too readily; (3) it is unlikely to be exercised because a particular argument was not advanced properly; and (4) it is unlikely to be exercised if to do so would involve introducing fresh evidence, unless the strict rules on admissibility are satisfied (see Outasight).

My decision

5. Having refused the claimant’s first application for reconsideration of my judgment striking out the claims, I treated the claimant’s correspondence dated 27 and 28 June 2020 as a second application under rule 70.
6. The claimant’s first reconsideration application proceeded by reference to Consignia plc v Sealy [2002] EWCA Civ 878, CA. This concerned the application of the Civil Procedure Rules in relation to deemed service to the tribunal’s factfinding into what was reasonably practicable under section 112(2)(b) ERA. In this second application, the claimant relies on the tribunal judgment of Harrison v MS Financial Services Plc (Case No: 2417084/2018) and also Sodexo v Gibbons [2005] IRLR 836, EAT. I am therefore satisfied that the second application is not advanced on substantially the same basis.
7. The tribunal wrote to the parties on 24 November 2020 to confirm that having reviewed their written representations, in which they had agreed that a hearing was not required, I had decided one was not necessary in the interests of justice to determine this application. The parties were invited to make further written representations within 21 days. It is notable that the London Central Employment Tribunal building closed at short notice on 18 December 2020 on health and safety grounds and administrative staff did not return to the building until April 2021. Very regrettably this led to further delay in dealing with this application. Having then received correspondence from the EAT on 23 June 2021 enquiries were made and a trawl for any relevant correspondence from the parties was conducted. None was found from which I conclude that neither party elected to make any further and final representations.

8. The background to this matter is set out in my judgment striking out the claims dated 22 June 2020. Although the chronology of this case is well-known to the parties it bears repetition:
- (1) I granted the respondents' application for deposit orders on 20 February 2020. From this date the claimant was on notice that he was required to pay £500 as a condition of proceeding with his claims (i.e. one deposit of £250 for each of the two claims) and that the consequence of a failure to pay this deposit on time would be that the claims being automatically struck out.
 - (2) The record of this hearing was sent to the parties on 6 March 2020.
 - (3) There were then a series of administrative delays: firstly, the deposit order was not sent until 1 May 2020 (this provided for a 21-day deadline for payment); secondly, that order was not sent together with the two-page 'Note Accompanying a Deposit Order' which explains how to pay a deposit i.e. by cheque or postal order and includes a tear-off strip for payment; thirdly, only the first page of that Note was sent to the claimant on 15 May 2020.
 - (4) The claimant wrote to the tribunal to request that the deadline for payment was extended by 21 days from 15 May 2020 on the basis that this was the date when he received the Note.
 - (5) The complete Note was sent to the claimant on 18 May 2020 when I agreed to extend the payment deadline by another 14 days from this date to 1 June 2020.
 - (6) As of this date, the claimant had been on notice for almost three months that he was required to pay a deposit as a condition of proceeding with each of his claims and they would be struck out automatically if this was not paid on time.
 - (7) The claimant delayed making this payment because he was waiting on the outcome of an appeal he had made in which he challenged the refusal to suspend the deposit order pending his appeal against the making of this order. This appeal outcome came on 29 May 2020. In the interim, the claimant was reminded by the tribunal on 18 and 22 May 2020 that the payment deadline of 1 June 2020 remained effective. The claimant waited until 27 May 2020 to send his payment, via Signed For First Class post.
 - (8) Two days later, on 29 May 2020, the claimant knew that his cheque had not been received.
 - (9) The claimant's cheque was received by the HMCTS Finance Support Centre on 8 June 2020. Because of this late payment the claims were struck out.
9. The claimant relies on Harrison v M & Financial Services Plc, a case in which a tribunal found that a two-day delay in payment (the deadline having already been extended by 21 days because of the tribunal's administrative error) was caused in part by the fact that the claimant had only saved the relevant funds near to the payment deadline and only then enquired about the methods for making payment two days before the deadline.
10. The claimant also relies on Sodexho v Gibbons a case in which the EAT held that a tribunal had acted permissibly in revoking its strike out

judgment in circumstances in which the reason for the original decision was that the claimant had failed to pay the deposit within the payment deadline because the deposit order had been sent to an incorrect address (notwithstanding that this arose because of an error made by the claimant in the claim form). The EAT held that the tribunal had been entitled in applying the interests of justice test to balance the respective interests of both parties.

11. The claimant also relies on the impact of the Covid-19 pandemic on the postal service, however, this factor was or should have been known to him when he waited until the ninth day out of 14, on 27 May 2020, to post his cheque and when he failed to ensure, having left himself with five days to effect payment timeously, that his chosen method of postage was guaranteed to arrive on time.
12. I am satisfied that in both of the cases on which the claimant relies it was found that a revocation of the strike out judgment was required in the interests of justice because of the prejudice that would otherwise be caused to the claimant: in Harrison, because the claimant had only saved the required funds days before the payment deadline; in Sodexo, because the deposit order had not been sent to the correct address. In each case this prejudice arose because timeous payment of the deposit was not possible for reasons which were outside of the claimant's control.
13. This is to be contrasted with the circumstances in this case, in which the claimant had 14 days to make payment, he had the means to pay and he had known for almost three months of the requirement to pay and of the consequences that a failure to pay on time would have on his claims. The claimant delayed sending his payment for nine days, out of the 14 days available, because he was waiting for an outcome to an appeal in which he sought to overturn the decision that the deposit order remained extant. He did so despite being informed twice by the tribunal that the payment deadline of 1 June 2020 remained effective. I am satisfied that the material reason for the late payment was the claimant's decision to delay making payment and not on any factors which were outside of his control. In these circumstances, I am also satisfied that it would not be in the interests of justice to revoke the decision to strike out the claims.
14. For these reasons, the claimant's application for reconsideration is refused.

Employment Judge Khan

10.07.2021

JUDGMENT SENT TO THE PARTIES ON

.12/07/2021..

FOR THE TRIBUNAL OFFICE