EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
Ms Bentley	Horizon Care and Education Ltd

AND

APPLICATION FOR A RECONSIDERATION

I refuse the application for a reconsideration by the claimant because I consider that there is no reasonable prospect of the judgment being varied or revoked under Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Background

1 An Open Preliminary Hearing took place on 25 August 2021 by Cloud Video Platform. The issues to be determined were: whether the claims were presented out of time, or whether any of the claims should be dismissed as having no reasonable prospect of success, and if the claims were out of time whether it was reasonably practicable for them to be presented in time and if not whether the claims had been presented within a reasonable period thereafter.

2 I concluded that the claims were out of time in circumstances where it was reasonably practicable for them to have been presented within time. Accordingly, the claims were dismissed because the tribunal had no jurisdiction to consider them. An oral judgment and reasons were provided to the parties on the day of the hearing. By an email sent at 7:44 AM on 26 August 2021 the claimant informed the tribunal that she would like to appeal the decision as she did not believe that her case was given a fair and just hearing. I treated this email as an application for a reconsideration of the judgment.

3 The claimant asserts the following in support of her reconsideration application:

3.1 The claimant had produced a bundle of documents in both electronic and hard copy form and the judge had not received either the hard copy or the electronic version but had only received the respondent's bundle.

3.2 The claimant was disadvantaged by the respondent's bundle being used for the hearing. She found the proceedings very difficult to follow as she had her own bundle to refer to with regards to page numbers.

3.3 The claimant's bundle contained new evidence that she had been sent by the respondent concerning the reason for her dismissal which was not available to the tribunal as it was in the claimant's bundle.

3.4 The claimant's evidence was not looked out by the judge and the bundle was not used, despite the claimant requesting it to be, which meant that vital evidence was missed and the claimant was put at a severe disadvantage.

3.5 One reason for time limits to be extended was that the claimant had received important new evidence from the respondent which was the turning point of her just feeling unfairly treated by her employer to believing that she had been treated unjustly due to the purposeful withholding of evidence, which was why her claim was late.

The Law

4 Rules 70 - 73 of the Rules provide (in so far as is relevant) as follows:

> 70 A Tribunal may ……. 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… may be confirmed, varied or revoked. If it is revoked it may be taken again.
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> 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 other parties) within 14 days of the date on which the written record, or other 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.
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> 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.

5 In **Outasight VB Ltd v Brown UKEAT/0253/14** it was explained that the change in the wording of the 2013 Rules (and in particular the removal of the specific categories which were contained at Rule 34(3)(a) – (e) of the 2004 Rules and the replacement of these by a consideration of what is in the interests of justice) does not signify a change in approach. The same basic principles apply to the 2013 Rules as under the 2004 Rules and cases decided under the old Rules are still relevant to cases under the new.

6 As to what the interests of justice might be these were described in **Flint v Eastern Electricity Board [1975] ICR 395** as being the interests of both the employee and the employer but over and above that the interests of the general public. It is in the interests of the general public that proceedings of this kind should be as final as possible; that is it should only be in unusual cases that a party is given a second bite of the cherry. In **Newcastle City Council v Marsden [2010] ICR 743** it was held that the introduction of the overriding objective did not mean disregarding the principles laid down in earlier cases and in particular the weight that had been attached to the need for finality in litigation.

Conclusions

7 I concluded that there is no reasonable prospect of the judgment being varied or revoked for the following reasons:

(i) The claimant wrongly asserts in her application that the judge had only received the respondent's bundle and had not received the claimant's bundle, which had been sent in both hard copy and electronic format. As was explained to the claimant at the start of the hearing the judge had received the electronic copy of the claimant's bundle but not the hard copy. Accordingly, the claimant's documents, in so far as they were relevant, were available to the judge.

(ii) It was explained to the claimant that it would be very difficult to use her bundle of documents as the main hearing bundle because (a) many of the documents related to the merits of the claims and not the preliminary issues to be determined and (b) the electronic bundle was in zip file format meaning that each document had to be opened individually, and it did not have page numbers.

(iii) Once the claimant had been reminded of the issues to be determined at the preliminary hearing she was asked whether there were any documents in her bundle, which were relevant to the preliminary issues, which were not contained in the respondent's bundle. The claimant said that there were.

(iv) The claimant was therefore asked to identify any documents from her bundle which she considered to be relevant and which she wanted the judge to read. The claimant duly did this. The respondent was likewise asked to identify relevant documents from the respondent's bundle. All of these documents were then read by the judge. Accordingly, the claimant is wrong to assert that the claimant's evidence was not looked at by the judge.

(v) The claimant confirmed that she was content to proceed with the documents having been dealt with in this way.

(vi) The claimant told the judge during the hearing that she found it easier to refer to her own bundle rather than the respondent's bundle, because it was easier for her to locate documents in her own bundle. Accordingly, the hearing proceeded with the judge and the respondent primarily using the respondent's bundle and the claimant using her own bundle. There cannot, therefore, as the claimant asserts, have been any disadvantage to the claimant caused by her having to use a bundle with which she was not familiar.

(vii) The claimant's asserted reasons for the late submission of her claim were fully ventilated at the preliminary hearing and it is in the public interest that there is finality in litigation and that the claimant is not given a further opportunity to argue the same points again.

8 For these reasons I concluded that there was no reasonable prospect of the original decision being varied or revoked, and that the reconsideration application should be refused.

Employment Judge Harding
13 September 2021