



EMPLOYMENT TRIBUNALS

Claimant: Mr A Brown

Respondent: J N Key Logistics Limited

JUDGMENT ON A RECONSIDERATION

The Claimant's application for a reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. I struck out the Claimant's claim for unauthorised deductions of wages and wrongful dismissal at a final hearing on 6 August 2021 because it had not been actively pursued. The Claimant failed to attend the hearing and the Tribunal was unable to contact him despite trying by phone and e-mail. He had also failed to comply with the Tribunal's orders dated 30 March 2021 ("the orders").
2. The judgment was dated 6 August 2021 ("the judgment") and sent to the parties on 11 August 2021.
3. On 7 September 2021, the Claimant made an application for the hearing to be re-heard. He explained that in addition to losing his job, he had had a terrible six months in his personal life and the Tribunal case "*totally slipped [his] mind*". He is taking medication for anxiety and depression.
4. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") provide as follows:

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.....

5. Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome. It is not sufficient for the Claimant to apply for a reconsideration simply because they disagree with the decision.
6. If a matter has been ventilated and properly argued during the course of the hearing, then any error or law falls to be corrected on appeal and not by way of review – **Trimble v Supertravel Ltd [1982] ICR 440.**
7. The Claimant's application has been made outside the 14-day time limit. That time limit can be extended under the provisions of Rule 5 of the Rules which provides:

“Extending or shortening time

5. The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.”

Conclusions

8. The Claimant has asked me to reconsider the judgment because the Tribunal case slipped his mind. The application was presented outside the 14-day time limit and the Claimant has not requested an extension of time. I can, however, exercise my discretion to extend time.
9. The Claimant has given a seemingly honest account of matters occurring in his life to explain why the Tribunal case slipped his mind and he failed to attend the hearing.

However, he has failed to explain why the application was presented outside the 14-day time limit when he clearly received the judgment and attached guidance on requesting a reconsideration. Accordingly, there is nothing to persuade me that I should exercise my discretion to extend the time limit.

10. Even if I had granted an extension of time, I am mindful that the Claimant had full opportunity to give evidence at the final hearing and he has not advanced any special circumstances that would persuade me it would be in the interests of justice to reconsider my original decision. Furthermore, he has not made any attempt to comply with the Tribunal's orders in order to demonstrate that he actively pursues the claim.

11. Accordingly, I am satisfied that (1) the application is out of time and (2) even if it were in time, there is no reasonable prospect of the original decision being varied or revoked and it is not in the interests of justice to reconsider it. The application for a reconsideration is, therefore, refused.

Employment Judge Victoria Butler

Date: 26 November 2021

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