



EMPLOYMENT TRIBUNALS

Claimant: Miss M Kaur

Respondent: Shape & Shine Ltd

JUDGMENT

The Respondent's application for reconsideration of the Judgment sent to the parties on 13th October 2021 is dismissed because it was made outside the time limit provided for by Rule 71 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 and there is no basis on which to extend time.

In all events, even had time been extended the application would have been refused under Rule 72(1) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 on the basis that there was no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Respondent applied for reconsideration of a Judgment sent to the parties on 13th October 2021. The Respondent's application was made on 24th November 2021. The covering email acknowledged that the application was made outside the time limit provided for by Rule 71 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. The reasons given for the late application was that the director dealing with the matter had been in India for over a month, returning on 20th November 2021, and had not been able to progress the matter whilst in India because of limited internet resources and that after she had returned to the United Kingdom ill health had prevented her from making the application sooner.
2. The Respondent was directed to set out the full grounds of the application, including why it was said that there had been bias towards the Claimant, and that was done on 3rd December 2021.

THE LAW

3. The procedure and basis for applications for Reconsideration is provided for by Rules 70 to 73 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("The Regulations"). Under the provisions of Rule 70, a Judgment will only be reconsidered where it is 'necessary in the interests of justice to do so' and a Tribunal dealing with the question of Reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly

and justly'. A Tribunal should also be guided by the common law principles of natural justice and fairness when dealing with applications of this kind.

4. The wording 'necessary in the interests of justice' in Rule 70 allows Employment Tribunals a broad discretion to determine whether Reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised 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 (see **Outasight VB Ltd v Brown 2015 ICR D11, EAT**).
5. Any application for reconsideration must be made within 14 days of the date that the Judgment is sent to the parties. That time limit can be extended under Rule 5 of the Regulations.

CONCLUSIONS

6. The first consideration is whether to extend time under Rule 5 of the Regulations. The Respondent has provided evidence that the director dealing with the matter, Ms. Joshi, was in India until 20th November 2021. However, it is clear that the Judgment was sent to her by solicitors who had acted for the Respondent on 20th October 2021 – that is within the relevant time frame to make an application for reconsideration. The correspondence accompanying the Judgment set out the time limits for making a reconsideration application. It is plain that Ms. Joshi knew what those time limits were because the Respondent's application made plain that it was known that it was out of time.
7. There is nothing to support the fact that there was any lack of internet resources which prevented an in time application being made. Indeed, the Judgment was sent to Ms. Joshi by email and it was clearly received. There is nothing to say why, if there were in fact such difficulties, Ms. Joshi could not have telephoned or otherwise contacted the Respondent's then solicitors to instruct them to present the application on the company's behalf. Those Solicitors had acted for the Respondent up to the full hearing albeit Ms. Joshi had represented the company at that hearing.
8. Given that position I decline to extend time under Rule 5 of the Regulations as there is no basis to do so. The application for reconsideration is therefore dismissed.
9. However, even if I had not dismissed the application on that basis then I would have dismissed it under Rule 72(1) on the basis that there is no reasonable prospect of the original decision being varied or revoked.
10. The Respondent's main thrust of its application is that there was bias shown towards the Claimant during the hearing. The main basis of that is that the evidence of the Claimant was preferred over that of Ms. Joshi. That was a decision reached after considering the evidence of both parties and the documentation adduced. I gave reasons why I preferred the evidence of the Claimant to that of Ms. Joshi. That is not bias but an assessment of the

credibility of both witnesses from whom I heard. That assessment may not be to the Respondent's liking but that does not mean that it is in the interests of justice to reconsider the decision taken.

11. There is reference in the application to my having cross examined Ms. Joshi. That was not the case. The Claimant was unable to properly formulate cross examination questions and in order that her case could be put for Ms. Joshi to respond to I set out what the Claimant was saying and asked for her comment. That is not cross examining the Respondent's witnesses and I attempted to assist both parties to put forward their respective positions. That included clarifying cross examination questions put forward by Ms. Joshi and formulating them to be put to the Claimant.
12. Where the Respondent has provided new evidence which was not before me, there is no explanation as to why that could not have been produced at the time as it was clearly in Ms. Joshi's possession. It is also difficult to see exactly what it adds to the evidence that I have already heard.
13. Whilst the Respondent also seeks to rely again on alleged overpayments that it is said were made to the Claimant, there was no defence pleaded within the ET3 Response about that matter at all and that Response had been set out by the Respondent's then solicitors. As it did not form part of the case before me it was not something that I was entitled to take account of.
14. Finally, whilst the Respondent raises that technical problems in a remote hearing played a major role in the outcome, no objection to a remote hearing was made at any time until after the Judgment had been issued. Whilst matters were difficult, that resulted mostly from the Claimant and Ms. Joshi constantly talking over each other and a lack of focus (see paragraphs 16 to 18 of the Judgment) and I cannot see that that would have been markedly different in person.
15. For the reasons given above, the Respondent's application is dismissed.

Employment Judge Heap

Date: 13th December 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Note:

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