



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr H Ouedraogo

and

ABM Facility Services UK Ltd

JUDGMENT

The Claimant's application dated 8 November 2021 for reconsideration of the judgment sent to the parties on 20 October 2021 is refused.

REASONS

- 1 I have read the Claimant's application from Mr Decker, sent by email dated 8 November 2021, which is three pages in length. I have also read the Respondent's letter to Mr Decker dated 20 March 2020 and referred back to the bundle of witness statements. From the Respondent, I have received and read the letter dated 11 November 2021, with nine pages of attachments.
- 2 Under Rule 70 of the Tribunal Rules (ETs (Constitution & Rules of Procedure) Regs 2013, Sch 1), the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. Pursuant to Rule 71 an application for reconsideration shall be presented in writing within 14 days of the date on which the written record of the original decision was sent to the parties.
- 3 The Claimant's application was presented out of time. The Judgment was sent to the parties on 20 October 2021 and any application for reconsideration should therefore have been received on or before 3 November 2021. In their written submissions, both parties have identified that the application was received late. In summary, the Claimant submits that he understood the 14 day time period as being business days 'as opposed to normal days'. It is also submitted that the Claimant 'was awaiting computer technician to assist him in retrieving an email sent by the Respondent's representative to the claimant'. It appears that the email referred to is the letter from the Respondent's solicitor dated 20 March 2020. It is stated that this was retrieved on Thursday 4 November 2021. The Claimant seeks an extension of time in order for his application to be fully considered.

- 4 Following a detailed consideration of the Claimant's application and the Respondent's response, I am not satisfied that it is appropriate to extend time to enable the Claimant to present his application for reconsideration out of time. In reaching this decision I have referred to the following matters:
 - 4.1 The Claimant was provided with clear guidance from the Tribunal as to the time limits applicable to such applications;
 - 4.2 The Claimant refers to the need to await expert computer assistance to retrieve the relevant correspondence in support of the application. However this correspondence could have been requested directly from the Respondent, thereby avoiding any delay in presenting the application. Further, even following retrieving the document, there was a further delay in the Claimant making the application from 4 November until 8 November 2021;
 - 4.3 The Claimant refers to the need to retrieve the email sent to him by the Respondent. It is clear from the letter of 20 March 2020 that the correspondence was sent to Mr Decker. It is therefore to be presumed that Mr Decker would have had a copy of this letter in any event.
- 5 I have taken these matters into account, referred to the overriding objective and the importance of the finality of litigation. I am not persuaded by the factual matters the Claimant relies upon as causing the delay to his application. I do not accept that they account for or adequately explain why the application was presented out of time – as noted, Mr Decker or the Respondent's representative could have provided the letter of 20 March 2020 rather than needing to use 'expert computer assistance' and there was additional delay between 4 and 8 November 2021. Accordingly, I do not extend time for the Claimant's application.
- 6 Notwithstanding my decision not to extend time, I have in the alternative proceeded to consider the merits of the application in any event.
- 7 Rule 72 provides that if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Overall I see no reasonable prospect of the judgment being varied or revoked in this case, on the basis of the interests of justice. Accordingly, even if time was extended for the application for reconsideration to be presented out of time, I would reject the application.
- 8 I have re-read the Judgment and the witness statements. The conclusions reached in the Judgment have no realistic prospect of being changed on reconsideration. This is for the following reasons:

- 8.1 The Claimant's application seeks a reconsideration of the legal findings made in paragraph 61 of the Judgment. It is said that the Claimant's case, set out in paragraphs 74 and 75 of his witness statement, was not addressed by the Tribunal. However the paragraphs referenced from the Claimant's witness statement refer to the Claimant's recollection 'about April or May' and a demand from the Respondent's lawyer. They do not refer to March 2020 which is the relevant time period for the findings in paragraph 61 of the Judgment. Nor does the Claimant make any reference to the text messages sent by Mr Buttigieg in March 2020 and it was these messages that the Tribunal relied upon when making its findings set out in that paragraph.
- 8.2 It is erroneous for the Claimant to assert that he 'had made the case in his witness statement before the tribunal, that he could not return to work in March 2020, because the conditions imposed was that he should first withdraw his claim...'. I again note that the Claimant does not make any reference to March 2020 in paragraphs 74 and 75 of his witness statement.
- 8.3 In paragraph 14 of the Claimant's application, it is submitted that the Respondent's representative was 'silent on this' and therefore the Tribunal made findings without 'full knowledge of the conditions attached to his return, and the Claimant's undisputed evidence on this in his witness statement'. Again this submission distorts the position. As noted, paragraphs 74 and 75 of the Claimant's witness statement do not set out evidence about the text messages in March 2020. Mr Buttigieg also provided an account of this time (see paragraph 22 of his witness statement). The Claimant did not challenge this during the hearing to suggest, for example, that Mr Buttigieg's offer by text on 21 March 2020 was also conditional upon the Claimant agreeing to withdraw his tribunal claim.
- 8.4 In paragraph 16 of the Claimant's application, it is stated that the Claimant thought the Respondent had accepted the Claimant's case that he was unable to return to work in March 2020 because the Respondent 'demanded that he first withdraws his claim' and that the Respondent 'did not object to the authenticity and accuracy of the Claimant's claim in his witness statement'. Again, this submission is flawed. There is no reference in the paragraphs of the witness statement cited to the offer to return to work in March 2020 and therefore it cannot be said that the Respondent accepted the Claimant's case about a return to work at that time from what is said in those paragraphs.
- 8.5 Paragraphs 18 and 19 of the Claimant's application refer to the Respondent's duty of candour and the suggestion that the Respondent has failed to 'truthfully' explain the position pre-July 2020. The accusations included in these paragraphs are misplaced. The Claimant's starting point, that he had set out his case concerning the offers in March 2020 in his witness statement, is incorrect. There was

no evidence before the Tribunal to link Mr Buttigieg's texts to the Claimant on 21 March 2020 with correspondence from the Respondent's solicitor requiring the Claimant to withdraw his tribunal claim nor was this suggested to any of the witnesses by the Claimant's representative or stated by the Claimant in his own evidence. Further, the Claimant did not seek to produce the letter of 20 March 2020 in evidence to the Tribunal. In the circumstances there is no foundation for the assertion that the Respondent has failed to be open, frank and truthful in the presentation of its case before the Tribunal. The Respondent was legally represented and therefore aware of its obligations to the Tribunal. I do not entertain the Claimant's accusations without clear supporting evidence.

- 9 In summary, I do not accept the basis for the Claimant's application that the Tribunal's conclusion in paragraph 61 of the Judgment does not appear to have been made with regards to all the relevant evidence. The Tribunal did take into account the entirety of the relevant evidence. The letter from the Respondent's solicitor dated 20 March 2020 was not before the Tribunal and the Claimant's witness statement did not refer to the specific texts sent in March 2020 by Mr Buttigieg.
- 10 In the circumstances, if I had proceeded to consider the application out of time, I would have refused the application as there is no reasonable prospect of the original decision being varied or revoked.
- 11 The Respondent makes an application for their costs in dealing with the application in the sum of £420.00. I shall decide this application following receipt of any submissions the Claimant wishes to make on it. No later than **4 January 2022** the Claimant shall provide any written submissions to the Tribunal and the Respondent concerning the Respondent's application for costs.

Employment Judge Harrington
Date: 30 November 2021

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