



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr M Atkinson

**Respondent:** British Telecommunications plc

## JUDGMENT

The claimant's application dated 3 December 2021 for reconsideration of the judgment of the Tribunal delivered orally on 27 October 2021, the written reasons for which were sent to the parties on 1 December 2021, is refused.

## REASONS

1. By an email dated 3 December 2021, the claimant sought reconsideration of the tribunal's judgment in this matter that was delivered orally on 27 October 2021, the written reasons for which were sent to the parties on 1 December 2021. By that judgment, the tribunal dismissed the claimant's claims for unfair dismissal and for a contractual redundancy payment on the basis that they were presented out of time, the claimant having failed to establish that it was not reasonably practicable for him to have presented the proceedings within time.
2. A tribunal has power to reconsider any judgment where it is necessary in the interests of justice to do so: Rule 70.
3. The claimant's application for a reconsideration under r 71 must first be considered by me as the judge that made the decision. If I consider there is no reasonable prospect of the original decision being varied or revoked, I must refuse the application. If I consider that there is some reasonable prospect of the original decision being varied or revoked, I must seek a

response from the respondent and seek the views of the parties on whether the matter can be determined without a hearing. The application is then to be determined by the tribunal, whether it is dealt with at a hearing or on the papers.

4. In deciding whether it is necessary to reconsider a judgment in the interests of justice, the tribunal must seek to give effect to the overriding objective to deal with cases fairly and justly. That includes taking into account established principles. Those established principles mean the tribunal must have regard not just to the interests of the party seeking the review, but also to the fact that a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final and to the public interest requirement that there should, as far as possible, be finality of litigation. As the court stressed in *Flint v Eastern Electricity Board* [1975] IRLR 277, QBD 'it is very much in the interests of the general public that proceedings of this kind should be as final as possible.'
5. As Simler P said in *Liddington v Gether NHS Foundation Trust* UAEAT/0002/16/DA:

"A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration."

6. The claimant contends that his GP letter (document 46 at page 211 of the bundle) was overlooked and quote's part of a sentence from paragraph 37 of the written reasons in support of such contention. It is somewhat misleading to focus solely on part of a sentence when the whole needs to be considered for the context to be understood. The full paragraph is repeated below, with my emphasis added to illustrate the point. As is evident from express reference being made to the claimant's mental health suffering as a consequence of his being made redundant, and to a referral by his GP for counselling sessions in February 2021, the tribunal was alert to such matters and did have regard to the evidence. What was lacking was medical evidence of the extent or severity of any mental illness and of the impact on the claimant's ability to undertake activities such as those highlighted bold below.

*Although Mr Atkinson's mental health undoubtedly suffered as a consequence of being made redundant, such that he was referred for counselling sessions by his GP in February 2021, there is no medical evidence before the Tribunal to suggest that Mr Atkinson was not physically or mentally well enough in the*

*period 8 November 2020 – 7 February 2021 to have made enquiries about his legal rights, or contacted ACAS, or a solicitor, or his former union, or presented an ET1. A cursory internet search would have revealed the basic information required to pursue a claim. Mr Atkinson was admittedly functioning to the extent of being able to make job applications online and even attend an interview for one role during the relevant period.*

7. The claimant objects to use of the word 'even' in the final sentence of the above paragraph and asserts that 'also' should have been used instead. He argues that it is inappropriate to assume that he should have been able to confront his redundancy from BT because he had applied for a job and attended an interview, stating that his mental health issues were specifically related to his redundancy and that anything else he did in that timeframe is completely unrelatable and incomparable.
8. In deciding whether a claimant has established that it was not reasonably practicable for them to have presented the proceedings within time, it is perfectly proper for the tribunal to have regard to their level of functioning in other respects at the relevant time. The tribunal weighed up and evaluated all the evidence before concluding that the claimant had not discharged the burden upon him. Use of the word 'even' is unobjectionable in the context in which it was used and does not provide a ground for reconsideration.
9. Finally, the claimant suggests that it is in the public interest that the claim against BT is heard. That is an irrelevant consideration for the tribunal.
10. There is nothing in the grounds advanced by the claimant that could lead the tribunal to vary or revoke its decision. I consider there is no reasonable prospect of the original decision being varied or revoked. It follows that I must refuse the application.

Employment Judge Moss

Date 29/12/2021

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.