



EMPLOYMENT TRIBUNALS

Claimant: Ms R Thomas

Respondent: Brandpath UK Ltd (formerly known as Expansys UK Ltd)

JUDGMENT

The claimant's application dated **28 January 2022** for reconsideration of the judgment, sent to the parties on **14 January 2022** is refused as it has no reasonable prospects of success.

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

70. Principles

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.

71. Application

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.

72. Process

(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.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a

full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1), requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.
3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, 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.
4. Under the current version of the rules, there is a single ground for reconsideration — namely, “where it is necessary in the interests of justice”. This contrasts with the position under the 2004 rules, where there specified grounds upon which a tribunal could review a judgment.
5. When deciding what is “necessary in the interests of justice”, it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.
6. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. The specific grounds were unnecessary because an application relying on any of those other arguments can still be made in reliance on the “interests of justice” grounds.
7. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were *exceptional* circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.
8. A 3 page letter dated 28 January 2022, signed by the Claimant, was attached to an email of 28 January 2022 from the Claimant’s son. The other attachments to that email were a letter dated 3 July 2021 and a certificate of posting with the date 5 July 2021.
9. As far as the letter of 28 January 2022 is concerned, I accept that as a valid application for reconsideration, made within the time limit. I also note the information in the covering email, and am content to take that into account as well.

10. As far as the 3 July 2021 item is concerned, I have no reason to doubt the implied assertion (not expressly stated) that the 3 July letter is one of the two items which are mentioned on the certificate of posting (one to the tribunal's address, and one to "Third Avenue"). However, this letter is not previously on the file. Its existence was mentioned to me at the resumed hearing in September and, as I said to parties at the time, I asked staff to try to locate the letter. A search was done, and the letter was not found. Several emails (as opposed to letters) from the Claimant in July 2021 were received, but not this letter. The 3 July 2021 letter is not a request for reconsideration of a judgment, no judgment having been issued by me by that stage. Rather the hearing was part heard, having been adjourned on 25 May 2021, and resuming on 20 September 2021. As I said to the parties in September when we discussed the matter, I agree that the word "preliminary" should have been omitted from the document sent to the parties on 8 June 2021, which contained the summary and orders made on 25 May 2021, after I had agreed to the adjournment. These were orders which were made orally, and the document merely supplied written confirmation. As I said to Ms Thompson (the friend of Ms Thomas, the Claimant, who was providing some assistance to the Claimant during the hearing) in September, all of the hearing dates (21, 24, 25 May 2021 and 20 and 21 September 2021) were part of a final hearing, not a preliminary hearing. See paragraph 4 of the reasons.
11. I note the remainder of the comments in the 3 July 2021 letter. None of them are relevant to the reconsideration application, and so I will not comment on all of them. It was not necessary, and not appropriate, for that 8 June 2021 document to set out full details of the disputed facts and issues. Furthermore, it accurately reflects the orders that were given orally.
12. The Claimant makes criticisms of the bundle prepared by the Respondent and alleged lack of disclosure of documents. To the extent that these matters had not already been dealt with by judges making earlier orders, they were dealt with by me at the hearing. The Respondent's bundle was not perfect, and nor was the Claimant's, but a fair hearing was possible, and I was able to navigate my way around each bundle. The Claimant had had the Respondent's bundle in good time before the hearing and also presented her own bundle.
13. The Claimant mentions that she applied for postponement. As briefly mentioned in paragraph 3 of the written reasons, the Claimant had made previous postponement applications, and EJ Hawksworth had made orders as to what documents and evidence the Claimant needed to submit if making a further postponement request. She did not comply with those orders, and I refused postponement on Day 1. The Claimant is correct that an ambulance was called to the court building on 25 May 2021. After discussions with the Claimant (which I was not party to, of course) the ambulance left. The hearing resumed with an application by the Claimant to adjourn, which was opposed by the Respondent and granted by me. The hearing resumed 4 months later and I declined to postpone the resumption.
14. The Claimant alleges that she was denied a fair hearing and suggests that the hearing did not comply with guidance in the Equal Treatment Bench Book. The adjustments set out in paragraph 6 of EJ Hawksworth's orders of 8 March

2021 were complied with during each day of the hearing. Previous postponements had been granted and, on 8 March 2021, very clear and detailed and specific instructions were given to the Claimant (paragraph 5 of EJ Hawksworth's orders) about what she had to do to seek a further postponement. Those orders were not complied with. Even so, the adjournment was granted on 25 May 2021.

15. For the reasons stated above, having considered the Claimant's application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked, and the application is refused.

Employment Judge Quill

Date: 08 February 2022

JUDGMENT SENT TO THE PARTIES ON

10 February 2022

FOR THE TRIBUNAL OFFICE