



EMPLOYMENT TRIBUNALS

Claimant: Dr R J Heal
Respondent: University of Warwick and others (see Annex A)
Date: 11 February 2022
Before: Employment Judge A James (sitting alone)
Sitting at: London Central
Appearances: Not applicable - decision made on the papers

JUDGMENT

(1) The application for reconsideration of the Judgment dated 13 August 2021 (Employment Tribunals Rules of Procedure 2013, Rules 70 to 73) is refused for the reasons set out below.

REASONS

The reconsideration application

The Costs judgment

1. The Costs Judgment was issued on 13 August 2021.
2. The relevant sections of the judgment read as follows:

7 The claimant did not complete form EX140 as he had been ordered to do....

12 The claimant has still failed to submit a completed form EX140, despite having been directed to do so on two occasions. Nor has he specifically confirmed whether he owns his own home. His failure to do so demonstrates disrespect for tribunal orders. ...

35 The tribunal has a discretion to take into account a party's ability to pay. The tribunal is entitled in appropriate circumstances to decide not to do so. The Tribunal has determined in this case that it is not appropriate to take

into account the claimant's ability to pay. That is partly because of his unreasonable conduct leading up to the award of costs. It is also partly because of the claimant's failure to comply with the order to complete form EX140, which would have put before the tribunal all relevant information about means, in a format which is subject to a signed statement of truth. In line with the case of Oni, the claimant was ordered to complete Form EX140 if he wanted the tribunal to take into account his ability to pay. He has failed to do so, twice. Nor has the claimant confirmed, as ordered to do on 27 May 2021, whether he owns his own home. His continuing failures to comply with tribunal directions also amount to unreasonable conduct.

36 The purpose of ordering the claimant to complete form EX140, was to ensure that all relevant information was before the tribunal, before determining the amounts to be awarded against the claimant. It is not for the claimant to decide how to respond to tribunal orders by simply sending an email with some information about means contained in it instead.

37 In such circumstances, I have determined that the appropriate course of action is not to exercise the discretion given to the tribunal by rule 84.

3. An application was made by the claimant on 16 August 2021, for a reconsideration of the judgment. In his reconsideration request, the claimant asserted that contrary to what is stated in the judgment, form EX140 had in fact been filed by him.
4. As a result, the directions set out below were made. Before setting out what those directions were, and the responses to them, Employment Judge A James apologises to the parties to the proceedings and their representatives, that the emails setting out the claimant's response to the costs application, including a copy of form EX140, were not provided to him prior to the decision on costs being made.

Employment Tribunal Rules of Procedure 2013

5. Rules 70, 71 and 72 of the Employment Tribunal Rules of Procedure 2013 provide as follows:

RECONSIDERATION OF JUDGMENTS

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.

(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.

6. The application for reconsideration has been considered under Rule 72(2). The parties have agreed that the application be dealt with on the papers, and have been given the opportunity to make written representations.

The parties submissions

7. The following directions were sent to the parties on 27 October 2021:

*7.1. The claimant is ordered to confirm **on or before 4pm on 23 November 2021**, whether or not other attachments were sent to the Employment Tribunal on or before 4pm on 11 June 2021? If so, any further emails sent to the tribunal attaching those documents, should be forwarded to the tribunal by the same time and date, via this email address (as well as to the London Central address), together with any acknowledgement email(s) in response from the tribunal.*

*7.2. If form EX140 was not in fact filed in time, the claimant is ordered to set out any written representations he wishes to make, **on or before 4pm on 23 November 2021**, as to whether or not his means should be taken into account now, and if so why?*

*7.3. Finally, the claimant is ordered to confirm **on or before 4pm on 23 November 2021**, whether or not he would like a hearing in relation to the reconsideration application, or whether he is content for the application to be determined on the basis of the written representations? If he does want a hearing, he should set out whether, and if so why, he wants a hearing in person, and if so which at which venue; or a hearing by video link.*

*7.4. The respondents are ordered to respond in writing to this email address **by 4pm on 21 December 2021**. They should also confirm whether they want the application to be determined on the basis of the written representations, or at a hearing; and if the latter, whether they are content for the hearing to be by video link, or in person (and if so where?). To the extent that the respondents are able to consolidate their responses, rather than sending individual responses, that would be appreciated by the tribunal, although they are at liberty to send individual responses if that is more convenient/ less costly for them.*

The claimant's response

8. In his response, the claimant confirmed that he did send form EX140 to the tribunal. Enquiries with tribunal staff have confirmed that, contrary to the previous

confirmation that no response had been received and that the form had not been filed, it had been filed just before the deadline. The claimant confirmed that he is content for the reconsideration application to be dealt with in writing.

9. The form EX140 is not signed and dated by the claimant. It states the following.
 - 9.1. The claimant is a 59-year old man.
 - 9.2. He is divorced.
 - 9.3. He provides care to an elderly relative.
 - 9.4. He has been unemployed since 2008.
 - 9.5. He has been a part-time carer between 2008 to 2011 and from 2016 onwards
 - 9.6. He is in receipt of Universal Credit, in the sum of £229.54 pcm.
 - 9.7. He lives in lodgings in a relative's home, presumably the same relative to whom he provides part-time care.
 - 9.8. He pays £500 rent pcm. He does not receive housing benefit. He is said to be in rent arrears of £2500. He pays £502.07 Council Tax pa.
 - 9.9. The claimant has two bank accounts, with a total of £219.80 in them (the balance in November 2021 was £54). He owns premium bonds to the value of £525 (current value £325) and Saga shares worth, £97.81 (the current value is £71.66).
10. It is apparent from the above that the claimant is a person of limited means. That does not appear to be likely to change anytime soon. The claimant's email of 23 November 2021 shows a slight reduction in his capital since form EX140 was filled in.

The respondents' joint response

11. Nick Wright, on behalf of the University of Warwick, made the following representations, on behalf of his client and all of the other respondents.
12. The respondents accept that they received the claimant's email of 11 June. As noted above, separate enquiries have confirmed that those emails were also received by the tribunal, in time.
13. Rule 84 gives discretion to take into account means. It is not compulsory. Insofar as the contents of paragraph 35 of the costs judgment refer to unreasonable conduct of the claimant in the litigation, they are still applicable.
14. The tribunal is asked not to exercise its discretion to take the claimant's ability to pay into account. This is on the basis of:
 - 14.1. The claimant's unreasonable conduct in bringing this litigation.
 - 14.2. Dr Heal is a prolific litigant in person;
 - 14.3. He is subject to a General Civil Restraint Order (GCRO) as a result of him bringing several claims that have been found to be totally without merit.
 - 14.4. A costs award is not made to punish the paying party but to compensate the party in whose favour the order is made.
 - 14.5. The tribunal has found that the costs incurred are reasonable;

- 14.6. Whilst there may be a low chance of full recovery of these costs, it is hoped that the award of costs award at the high end of the limit imposed on the tribunal by the summary assessment process shows that there can be consequences for litigants in person like the claimant.
15. The respondents are, like the claimant, content for the reconsideration application to be dealt with on the papers.

Decision on the application

16. Bearing in mind the above representations, the decision of the tribunal is to refuse the application for reconsideration. Even though form EX140 was filed, it was not signed and dated, as required by the process.
17. In any event, the tribunal has the discretion to decide whether or not to take means into account. The tribunal considers that such discretion should be exercised in favour of the respondents in these claims, not the claimant.
18. The claimant has persisted, for a number of years, in pursuing unmeritorious claims, causing significant costs for all of the respondents involved. It is estimated that the true cost, for all of the respondents involved in this litigation, including claims not previously taken into account, pursued by the claimant against four respondents in the Cardiff Employment Tribunal and one respondent in the Birmingham Employment Tribunal is likely to be in the region of £1 million.
19. The claimant's unreasonable conduct throughout this litigation persuades the tribunal that this is an appropriate case to decide not to take the claimant's means into account. In doing so, the tribunal has had due regard to the principle that the purpose of a costs award is to compensate the respondents, not to punish the claimant.

Outcome

20. The reconsideration application is refused for the reasons set out above.

Employment Judge A James

14 February 2022

Sent to the parties on:

14 Feb. 22

For the Tribunal:

**ANNEX A – TABLE OF CLAIMS AND RESPONDENTS
SUBJECT TO THE COSTS JUDGMENT**

<u>Case no</u>	<u>Respondents</u>
A 1303049/2018	R1 University of Warwick
B 1303517/2018	R1 Birmingham University
C 1400476/2018	R2 University of Bath
F 2205140/18	R5 The Chancellor, Masters, and Scholars of the University of Cambridge
G 2205365/18	R1 King's College London
H 2206127/18	R2 University of Southampton
I 2206128/18	R2 Camden & Islington NHS Foundation R3 University College London R4 University of East London R7 Royal Holloway and Bedford New College
J 2300463/18	R1 South London & Maudsley NHS Foundation Trust R2 King's College London R5 Camden & Islington NHS Foundation Trust
K 2302437/2018	R1 St George's, University of London

Case Number: 1303049/2018 & others (see annex A)

M 3306697/2018	R2 Green Templeton College R4 Magdalen College R5 Pembroke College R6 Somerville College R7 St. Anne's College R8 St Catherine's College R9 St Hugh's College R10 St Peter's College R11 Worcester College R12 Christ Church
N 3307522/2018	R1 The Chancellor, Masters and Scholars of Cambridge University R2 Hughes Hall R3 St Edmund's College R4 Wolfson College R5 Magdalene College R6 Wescott House R11 Ridley Hall Theological College