



EMPLOYMENT TRIBUNALS

Claimant: Miss Lesley Burrill

Respondent: Mr Avarinth Sivasithamparam t/a Ansdell Wines

JUDGMENT

The respondent's application for reconsideration of the Tribunal's judgment sent to the parties on 25 January 2022 is refused.

REASONS

The Law

1. By rule 70 schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, an Employment Tribunal has a general power to reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the judgment may be confirmed, varied or revoked.
2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
3. When determining whether it is in the interests of justice to reconsider this matter the Tribunal has a discretion (which must be exercised judicially), giving effect to the overriding objective to deal with cases fairly and justly, not only to the interests of the party seeking reconsideration but also to the interests of the other parties and to the requirement that there should, so far as possible, be finality in litigation. This means the claimant does not have a right to re-litigate matters which gave rise to the judgment nor to have a second chance to present further evidence which could reasonably have been made available at the time of the original hearing (**Stephenson v Golden Wonder Limited [1977] IRLR 474 EAT**).

4. Reconsideration requires an application to be presented to the Employment Tribunal in writing and copied to the other parties (rule 71). This must be done within 14 days on which the record of the judgment was sent to the parties and should explain why reconsideration is necessary.

5. The record was sent on the 25 January 2022. The respondent's application for reconsideration is contained in an email dated 21 February 2022, which is outside the 14-day time limit. However, since the respondent first contacted the Tribunal on 3rd February 2022 raising the same issues as those now pursued, I extend time to the 21 February 2022 under rule 5 of the 2013 Rules. I am satisfied this is a valid application with the respondent having now copied in the claimant as required.

The Application

6. These proceedings began when the claimant submitted a claim form (ET1) to the Employment Tribunal. The ET1 having been accepted, this document was sent to the respondent who was entitled to defend the claim by submitting a response (ET3), which he was required to return to the Tribunal within 28 days of the date he was issued with the ET1.

7. The time for submission of the respondent's response expired on 6 October 2021. He had been warned in a letter dated 8 September 2021 that a judgment could be issued against him if no response was received by the expiry date. The letter also informed the respondent of the proposed hearing date of 18 January 2022 and issued a number of Case Management Orders.

8. No response was received so the matter proceeded to a final hearing which took place before me on 18 January 2022.

9. Based on the evidence presented by the claimant I then issued a judgment in respect of her claims for unfair dismissal and holiday pay.

10. The respondent seeks reconsideration, requesting that the matter be "put on hold" so as to await the outcome of a police investigation into the alleged misuse of his business "Booker" card which he says is the reason for the claimant's dismissal. The respondent argues that the claimant has not told the truth to the Tribunal.

11. The right place for the respondent to have set out his case was in a response to the claim. The matters he now raises could reasonably have been put forward in that response and are not "new" as the claimant made me aware of the investigation to which he refers when narrating her version of events which I accepted as being truthful.

12. The respondent had also been sent a letter from the Tribunal on 11 November 2021 advising him that having not entered a response, he could only participate in any hearing that did take place to the extent permitted by the Employment Judge who was to determine the matter. He did not submit any communication to the Tribunal until 3rd February 2022 after the Judgment had been issued.

13. Having considered the points made by the respondent there is, in my judgment, no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Employment Judge Ganner

Date: 24 March 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

Date: 22 April 2022

FOR THE TRIBUNAL OFFICE

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