



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Edmondson

v

The Nest Group Ltd

Heard at: Watford

On: 30 July 2021

Before: Employment Judge Allen

Appearances

For the Claimant:

For the Respondent:

JUDGMENT ON RECONSIDERATION

1. The Judgment of the Employment Tribunal is that there is a reasonable prospect of the judgment of 30 July 2021 being varied or revoked. The claimant's reconsideration application dated 30 November 2021 is granted.

REASONS

1. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative 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 judgment may be confirmed, varied or revoked.
2. An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record was sent to the parties.
3. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration

but also 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. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations. The obligation 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.
 - Saving expense.
5. The procedure upon a reconsideration application is for the Employment Judge that heard the case or gave the judgment in question to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interest of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
6. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application is to act as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be considered at a reconsideration hearing.
7. In this case, I issued a judgment on 30 July 2021 ('the judgment') sent to the parties on 23 November 2021. I proceeded in the absence of the respondent and gave judgment that the claimant's claim succeeded and set a remedy hearing for 2 December 2021 in the absence of a statement of loss from the claimant.
8. In a letter dated 30 November 2021, the respondent's solicitor applied for reconsideration of the judgment upon the basis that there was no evidence I had considered Rule 30A (2) c in providing judgment.
9. In an email sent at 9:17am on 30 July 2021 the tribunal received an email from the respondent's accounts department stating:

“Firstly may I apologise for the late notice, caused to an immediate request to return every member of staff to their homes for isolation as per the attached due to one of the employees testing positive for COVID 19 and as the Director whom knows most about this case, Dean Jenkins, whom has exceptionally poor internet and telephone connectivity at his home address, it would be unviable to attempt to join this hearing and is unable to locate elsewhere due to COVID restrictions.”

10. The respondent's email was copied to the claimant at 9:38 am who in turn responded to the court at 9:59 am and was forwarded to me at 10:01. The hearing commenced at 10:00am.
11. It is apparent from the judgment that I was aware there had been an application for a postponement of the hearing given I have recorded that the claimant objected to it and the application had been made within 7 days of the hearing.
12. Having reviewed the judgment I see that the respondent's assertion is correct and it does not record that the exceptional circumstances put forward by the respondent were considered in accordance with Rule 30A(c).
13. In the circumstances, the reconsideration application is granted

Employment Judge Allen

Date: 25 May 2022

Sent to the parties on:

16 June 2022

For the Tribunal Office