



EMPLOYMENT TRIBUNALS

Claimant: Mr M Palmer
Respondent: Mitie Limited
Before: Employment Judge Park

JUDGMENT FOLLOWING RECONSIDERATION

The Claimant's application for reconsideration of my judgment is refused.

REASONS

1. Under Rule 70 of Schedule 1 of 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 a 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 within 14 days of the date upon Judgment is sent to the parties. The Judgment in this case was sent to the parties on 4 May 2022.
3. On 13 May 2022 the claimant sent an email to the Employment Tribunal stating:
"I would like East London ET to review the case as the respondent failed to send me the evidence I required for the case and the East London ET failed to put to orders in place for this which I asked for.

Also the original case was for constructive dismissal because of breach of duty of care which has had a serious damage to my health which in the first place would not of happened if they had sorted the problem out and put duty of care in place when I required help including an ambulance when I had serious chest pain"
4. 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.
5. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the 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 interests 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 the considering of the application upon the papers initially is to operate as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be the subject of reconsideration hearing
7. The Employment Appeal Tribunal has given guidance as to the nature of a request for reconsideration: (a) Reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to re-argue matters in a different way or adopting points previously omitted. (b) 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 (c) It is not a means by which to have a second bite at the cherry, or is it 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. (d) Tribunals have a wide discretion whether or not to order reconsideration. Where a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.
8. The claimant has asked that the Judgment is reconsidered because he says the following was not considered:
 - a. the respondent had not disclosed the documents he had requested; and
 - b. his argument that he was constructively dismissed due to a breach of the duty of care which had damaged his health.
9. I am satisfied that both these points were fully considered and taken into account at the original hearing and in the Judgment. During the hearing there was discussion about the documents that had not been disclosed and the respondent was asked to provide them during the course of the hearing if possible. The claimant did not request that the hearing was adjourned to enable additional disclosure to take place. When making my findings of fact I fully weighed up whether the content of any missing documents may have had an impact on any findings that were material to the issues to be determined.
10. I am also satisfied that I fully considered the claimant's argument that he was constructively dismissed due to a breach of the duty of care by his employer. I heard evidence from both parties as to what had happened and what the claimant said had led to his decision to resign. Although the claimant described this as a breach of the duty of care, having heard his evidence I concluded the argument he was putting forward was better understood as conduct by the respondent that was likely to destroy trust and confidence. The alternative would have been a breach of the implied term that an employer provides a safe system of work and safe workplace. This was a question of labelling and I am satisfied this was the correct approach based on the evidence I had heard about the events that led up to the claimant's decision to resign, including the claimant's own evidence.

11. I am not satisfied that it is in the interests of justice to reconsider the Judgment.

**Employment Judge Park
Dated: 27 June 2022**