



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Kowalczyck

v

DHL (Aviation) UK Ltd

JUDGMENT ON RECONSIDERATION

Upon the Claimant's application dated 21 June 2022 under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the Tribunal's decision on Remedy on the grounds the tribunal had not heard argument on remedy save as regards to Polkey.

The Judgment of the Employment Tribunal is that the judgment on Remedy of 31 May 2022 and sent to the parties on 7 June 2022 was entered in error and is set aside.

The case will be set down for hearing of argument regarding remedy by the judge and non-legal panel members who sat on the Full Merits Hearing on **27 January 2023**.

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.
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, the tribunal issued a reserved judgment on 31 May 2022 ('the judgment') sent to the parties on 7 June 2022. The claimant's claim for unfair dismissal was upheld and the claim for disability discrimination was dismissed. Judgment was also made for Remedy in error. The tribunal had insufficient time to hear argument on remedy and ordered written submissions to be made on Polkey and contributory fault.
8. The reconsideration application was made within the prescribed time limit the judgment having been sent to the parties on 7 June 2022 and the application having been made on 21 June 2022. The reconsideration application applies only to the portion of the judgment that goes to remedy.
9. The respondent cites the interests of justice in their application on the grounds the Tribunal indicated it required written submission of Polkey and contributory fault only.

Interests of Justice

10. Judgments can be reconsidered by a Tribunal on its own initiative or on the application of a party where it is necessary in the interests of justice to do so. The phrase "interests of justice" is not defined in the new rules but is likely to include instances where:
 - i. The judgment was wrongly made as a result of an administrative error.
 - ii. A party did not receive notice of the proceedings which led to the judgment.
 - iii. The judgment was made in the absence of a party.
 - iv. New evidence has come to light since the conclusion of the hearing (as long as its existence could not have been reasonably known or expected at the time of the hearing).

The tribunal will not agree to reconsider the judgment just because a party disagrees with it. There must be valid reasons for a reconsideration. A Judge has power to refuse an application for a reconsideration if they think it has no reasonable prospect of success.

11. The arguments raised by the respondent in support of its application for a reconsideration and summarised at paragraph 9 above are consistent with item 10.i. above.
12. I am able to deal with the application without the claimant's input. The tribunal made an administrative error and, in all the circumstances, there is sufficient to dispose of the reconsideration application.
13. It is in the interests of justice to reconsider the judgment in the circumstances.

16. In the circumstances, the reconsideration application succeeds.

Employment Judge Allen

Date: 11 August 2022

30/8/22

Sent to the parties on:

J Moossavi

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For the Tribunal Office