EMPLOYMENT TRIBUNALS

Claimant: Ms J Khanam

Respondent: Vistra International Expansion Ltd

JUDGMENT

The claimant's application dated **3 July 2022** for reconsideration of the judgment sent to the parties on **14 April 2022** is out of time and I do not extend time.

In the alternative, it is refused as it has no reasonable prospects of success.

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

70. Principles
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.

71. Application
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.

72. Process
(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. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which

made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1) requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the reconsideration, but also to 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. Under the current version of the rules, there is a single ground for reconsideration — namely, *"*where it is necessary in the interests of justice*".* This contrasts with the position under the 2004 rules, where there specified grounds upon which a tribunal could review a judgment.

5. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which 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; and saving expense.

6. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. In the new version of the rules, it had not been necessary to repeat the other specific grounds for an application because an application relying on any of those other arguments can still be made in reliance on the "interests of justice" grounds.

7. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were *exceptional* circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

The Claimant's application

8. The Claimant submitted an email dated 3 July 2022 seeking reconsideration. This is outside the relevant time limit. Her email of 16 April was not an application for reconsideration and did not stop the clock running.

9. The reply to the 16 April email was sent on 24 June 2022.

10. I do not think that it is in the interests of justice to extend time. The Claimant was aware that time limits might be enforced (as they had been in relation to some of her complaints to the tribunal) and aware, from the letter with the judgment, of what the time limits were. She said in the 16 April email that she was seeking legal advice. However, she has not put forward any particular reason for the lateness of the reconsideration application.

11. For completeness, I explain the decision I would have made under Rule 72 had I treated the application as having been made in time.

12. The Claimant seeks to rely on "new evidence". This is not newly discovered evidence, being a document in her possession since July 2020. For that reason, there is no reasonable prospect that the tribunal would agree to admit this evidence, and I do not need to comment on the other barriers to admissibility.

13. In any event, the tribunal made a decision about the reason for the dismissal, and rejected the Claimant's argument that the matter was pre-judged. There is no reasonable prospect that, if the tribunal was willing to admit evidence of without prejudice termination discussions in August 2020, that that would change the decision about the fairness of the dismissal, for the reasons stated in the original judgment and reasons.

14. The Claimant's second point refers to time limits for the Equality Act 2010 complaints. The tribunal took relevant factors into account, and there is no reasonable prospect that it would change its mind on the time limit point, whether by deciding that there was a continuing act, or for any other reason.

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Employment Judge Quill

Date: 10 August 2022

JUDGMENT SENT TO THE PARTIES ON

4 September 2022

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FOR THE TRIBUNAL OFFICE