# EMPLOYMENT TRIBUNALS

**Claimant: Mr. A. Adeyemi**

**Respondent: Shield Logistics Solutions Ltd**

# RECONSIDERATION JUDGMENT

**Upon the Claimant's application for reconsideration of the Tribunal's Judgment dated 9 May 2022, determined without a hearing**

**Time is extended solely in respect of the Claimant's out of time application for reconsideration.**

**The Claimant's application for reconsideration of the Tribunal's Judgment dated 9 May 2022 (sent to the parties on the 10 May 2022) is not well founded and is refused. The original Judgment is confirmed.**

## REASONS

1. The factual background to this case can be found the Tribunal's Judgment and full written Reasons which have been provided to the parties separately. I therefore do not repeat the factual history here.

**The Application for Reconsideration**

2. In an email dated 25 May 2022, the Claimant sought reconsideration of the Judgment of the 9 May 2022.

3. As per rule 71 of the Employment Tribunals Rules of Procedure ("ET Rules of Procedure") an application for reconsideration is to be made in writing within 14 days of when the original decision was sent to the parties. This time limit may be varied by the Tribunal under rule 5. There is no requirement that the party seeking reconsideration demonstrate that it was 'not reasonably practicable' to make the application for reconsideration in time.

4. The Judgment and Reasons were sent to the parties on 10 May 2022 and the application for reconsideration was made on 25 May. The application for reconsideration was therefore made one day late.

5. The Claimant is unrepresented and has been unrepresented throughout these proceedings. The application for reconsideration was made only one day late. In the circumstances, and as a delay of one day does not cause any detriment or disadvantage to the Respondent, I consider that it is in accordance with the overriding objective and proportionate to extend time by one day to the 25 May 2021.

6. The Claimant's grounds for reconsideration can be summarised as follows:

   i. There are serious mitigating circumstances. He was not in a position to bring the claim on time due to being the sole carer for a sick and elderly relative, who relied on him for his daily care. This took its toll on him, physically and mentally, having adverse effects on his health including his blood pressure which became difficult to manage. Such stresses prevented him from making the claim within the designated time, as he was not in the correct mental state to make the claim. As a result, he was a couple of months out of time bringing the claim. This was a relatively short time frame which did not adversely affect the Respondent.

   ii. His case had very high prospects of success and his claim succeeded in principle: he was found to be a worker.

   iii. He is a lay person and has no legal background or prior knowledge of the Employment Tribunal process. He struggled with filing in the form, getting the Respondent to respond to his claims, and presenting his evidence, all without legal representation. He could not afford legal representation.

   iv. It is in the interests of justice. There is no prejudice to the Respondent whose response was also out of time. The Respondent was successful in obtaining a set aside of that judgment in his favour. The evidence was not affected by the delay and he acted promptly in commencing conciliation; hence the Respondent was aware of the claim very early on. The Respondent also failed to co-operate with the ACAS process and ignored all attempts by ACAS to mediate the matter. The Respondent also acted unreasonably by not responding to the initial claim, which caused further delays. It would be unjust to treat the Claimant less favourably than the Respondent, whose response was out of time but still accepted.

7. The Respondent responded to the application for reconsideration on the 25 May 2022. It submitted that the grounds set out in paragraph 1 of the Claimant's application were not put as reasons at the hearing, despite the Judge taking great care to ensure the Claimant had explained fully the reasons for the late claim.

**The Law**

8. The rules relating to reconsideration applications are set out at 70 to 73 of the ET Rules of Procedure. As per rule 70, the Tribunal may reconsider any judgment where it is in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked. If it is revoked it may be taken again. If there is no reasonable prospect of the original decision being varied or revoked the application is to be refused.

9. There is an underlying public interest in the finality of litigation. Reconsideration is therefore not a means by which a disappointed party to litigation can get the opportunity to re-argue their case because they do not agree with the original

decision. In *Flint v Eastern Electricity Board* [1975] ICR 395 (High Court, Queen's Bench Division) it states at 404:

> *"But over and above all that (the interests of the parties), the interests of the general public have to be considered too. It seems to me that it is very much in the interests of the general public that proceedings of this kind should be as final as possible; that is should only be in unusual cases that the employee, the applicant before the tribunal, is able to have a second bite at the cherry."*

10. In *Newcastle City Council v Marsden* [2010] ICR 743 (EAT) it was said, at paragraph 17:

> *"In particular, the weight attached in many of the previous cases to the importance of finality in litigation—or, as Phillips J put it in Flint (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry—seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final (subject, of course, to appeal)."*

11. In *Ministry of Justice v Burton* [2016] ICR 1128 the Court of Appeal said, at paragraph 21:

> *"… the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily…"*

12. In *Outasight VB Ltd v Brown* 2015 ICR D11, EAT, Her Honour Judge Eady QC stated that the wording 'necessary in the interests of justice' in rule 70 gives Employment Tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, "*which means having regard not only to the interests of the party seeking the review or 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"*.

***My Conclusions***

13. Dealing first with the set aside of the default judgment, this was set aside on the basis that the Respondent had not been sent the original claim form and did not receive the default judgment until the 10 August 2021. The Respondent was therefore unaware of proceedings until the 10 August 2021. The delay in filing the response was therefore as a consequence of an administrative error rather than delay on the part of the Respondent. The Respondent was given an extension of time to apply for reconsideration, as has the Claimant in this application.

14. At paragraph 44 of my Reasons I said:

*"On the basis of the Claimant's oral evidence, I find that the reason why the claim was made out of time was because the Claimant had not checked, or clarified,*

*how the three-month time limit was calculated and, on the basis of the information that he had acquired, had misunderstood how it was calculated. He advances no other reason for missing the three-month time limit for submitting his claim with the Tribunal."*

15. At paragraph 54 I found that:

*"The Claimant was not suffering from any impairment or mental health problems preventing him from making such enquiries during the period in question. He could easily have checked or clarified the time limits at the same time as undertaking the steps that he did take."*

16. At paragraph 55 I found that:

*"There is no evidence before me to show that he was misled by Acas or given the wrong information about time limits. On the basis of the Claimant's evidence, on the balance of probabilities, I find that he did not apply his mind fully to the issue of time limits, misunderstood the situation, that he did have adequate opportunity in the two months after he first made contact with Acas to clarify the position, but he did not do so."*

17. The Claimant submits that his health and caring responsibilities resulted in his claim being made out of time. Whilst the Claimant had produced only a brief witness statement prior to the hearing, at the hearing he was asked a series of questions by me to establish the reasons for delay in lodging the claim. Issues relating to his health were fully explored, as were his circumstances more generally. He said that he had not visited his GP nor had he been prescribed any medication prior to the submission of the claim. No medical evidence was relied upon. When I asked him if he was in good health at the material time, he replied that he was in "working health" but he was under stress and was frustrated. He said that physically he was okay, although mentally he was not at his best. He said that he had since been treated by his GP for high blood pressure.

18. The Claimant's evidence as to his health and his consequent ability to deal with the claim at the material time was therefore fully taken in to account when findings of fact were made and conclusions reached as to whether it was reasonably practicable to lodge the claim in time.

19. At the hearing, the Claimant did not rely upon caring responsibilities as being the reason why he could not and did not lodge his claim within the three month time limit. His circumstances between the last day that he worked and the deadline for submitting his claim were explored during the hearing, as were the reasons why his claim was late. The Claimant now seeks to rely upon a further reason why his claim was late. He gives no explanation as to why he did not rely upon this reason previously.

20. It is not suggested by the Claimant that any new evidence has become available since the conclusion of the Tribunal hearing. Having reviewed the reasons for my Judgment and the documentary evidence that was before me at the date of the hearing, I consider that the Claimant's application for reconsideration is an attempt to re-litigate a matter that has been finally determined. I am satisfied that he was given a proper opportunity to fully explain to the Tribunal why his claim was late.

21. Consequently, for those reasons, the Claimant's application for reconsideration made under rules 70 and 71 of the ET Rules of Procedure is not well-founded and is refused. Acting in accordance with rule 72, I do not consider that the interests of justice require that the Judgment or its Reasons be varied or revoked. There is no reasonable prospect of such variation or revocation. The Judgment and its Reasons are confirmed.

Employment Judge Boyes

Date: 19 September 2022

Sent to the parties on:

20 September 2022

For the Tribunal Office