



EMPLOYMENT TRIBUNALS

Claimant: Mr. D. Ivanov

Respondent: TDH Limited (t/a Sun Studio.London)

Heard at: London Central (on paper)

On: 13 September 2022

Before: Employment Judge J Galbraith-Marten

JUDGMENT UPON RECONSIDERATION

The Respondent's application dated 25 August 2022 for reconsideration of the Judgment sent to the parties on 12 August 2022 is refused.

REASONS

1. Rule 70 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that an 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. Rule 71 states that 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.

3. The Employment Appeal Tribunal held in **Outsight VB Ltd v Brown 2015 ICR D11, EAT**, that necessary in the interests of justice in accordance with Rule 70 affords the Tribunal a wide discretion that must be exercised judicially. The Tribunal must determine whether reconsideration is appropriate in the circumstances having regard to the party seeking the reconsideration but also the other party to the litigation and the public interest requirement for finality in proceedings.
4. Reconsideration cannot be ordered simply because a party disagrees with the Judgment. Further guidance was provided by the President of the Employment Appeal Tribunal in **Liddington v Together NHS Foundation Trust UKEAT/0002/16/DA** ;

“a request for reconsideration is not an opportunity for a party to seek to relitigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration is a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they 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.”

5. In this case, the Judgment was sent to the parties on 12 August 2022 and the respondent made an in-time application for reconsideration of the Tribunal’s decision. The respondent relies on two reasons; (a) evidence was available to the Tribunal at the date of the hearing confirming the claimant had been paid the sums in dispute including two witness statements and, (b) the respondent’s inability to attend the hearing on 12 August 2022. The claimant provided his comments on the respondent’s application by email on 8 September 2022.
6. The evidence referred to by the respondent was considered by the Tribunal and the claimant was questioned accordingly. The Tribunal accepted the claimant’s evidence that the information provided by the respondent was incorrect. Furthermore, no signed witness statements were supplied by the respondent. The respondent produced contact details for two potential witnesses, but no signed statements were provided nor did the respondent, or its witnesses, appear at the hearing.
7. In terms of the respondent’s inability to attend. The Tribunal was informed on the morning of the hearing that the respondent’s director had been hospitalised and the respondent requested a postponement. The Tribunal requested evidence of the director’s hospitalisation so that it could consider the postponement application. No medical evidence was provided, the claimant objected to the postponement application and the application was refused.

8. The Respondent now asserts the absence was due to its director having a high blood pressure check which is a different reason to the one originally provided to the Tribunal. Nonetheless, the Tribunal again requested medical evidence of that check and again, no medical evidence has been provided by the respondent.
9. As the Tribunal considered the evidence referred to by the respondent prior to making its decision and as the respondent has failed to demonstrate it had a good reason for its non-attendance on 12 August 2022, it is not in the interests of justice for this matter to be reconsidered.
10. In the circumstances, there is no reasonable prospect of the original decision being varied or revoked and the application is refused.

Employment Judge J Galbraith-Marten

13/09/22

REASONS SENT TO THE PARTIES ON

13/09/2022

FOR THE TRIBUNAL OFFICE