



EMPLOYMENT TRIBUNALS

Claimant Mr D Creed

Respondent: National Union of Rail, Maritime and Transport Workers

JUDGMENT

The claimant's application dated 5 July 2022 for reconsideration of the judgment sent to the parties on 14 July 2022 is refused.

REASONS

The Relevant Law

1. Rule 70 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so.
2. Rule 71 provides 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 as necessary.
3. Rule 72 provides that an Employment Judge shall consider any application made under Rule 71. Where practicable the consideration shall be made by the Employment Judge who made the original decision or who chaired the full Tribunal which made it. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused.
4. A Tribunal dealing with an application for reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly contained within Rule 2 of the Regulations. This includes ensuring that the parties are 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.

5. Consideration of whether reconsideration is “necessary in the interests of justice” allows the Tribunal a broad discretion which must be exercised judicially which means 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 be so far as possible finality in litigation.

Background to this application for reconsideration

6. The claimant’s complaints of age and disability discrimination came before me on a strike out application on 23 June 2022.

7. The claimant was a litigant in person. The respondent was represented by Counsel. I did not hear evidence. The hearing proceeded by way of submission only.

8. My judgment was that the complaints had no reasonable prospect of success and so were struck out under Rule 37 Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

9. The claimant made a request for written reasons and an application for reconsideration dated 5 July 2022. The application was made before the short form judgment or reasons were sent out. It was made within time. The judgment and reasons have since been sent out. His grounds for reconsideration, which I summarise from his letter, are:

- a) I could not engage a legal representative.
- b) I was concerned and in a quandary when the barrister was putting forward points from similar cases.
- c) I only had a short time to address the barrister’s points.
- d) My hearing began to weaken and I was exhausted.
- e) There were a lot of documents in the bundle which only arrived a few days before the hearing.

My application of the law to this application

10. I reject the request for reconsideration on the ground that it is not necessary in the interests of justice as there is no reasonable prospect of the original decision being varied or revoked.

11. I respond to the grounds of application specifically as follows:

- A. In relation to the claimant being a litigant in person

12. The claimant did not suggest at the hearing that his status as a litigant in person was any impediment to him. He did not ask for a postponement so as to obtain representation. He was keen to proceed. He was supported by the Employment Judge in accordance with the guidance in the Equal Treatment Bench book. That support is recorded at paragraphs 10-13 of the Reasons. The claimant thanked the judge for the support.

B. I was concerned and in a quandary when the barrister was putting forward points from similar cases

13. The points of principle from the case law were explained to the claimant and checking back questions were used to ensure he had understood. The Employment Judge supported the claimant, as recorded at paragraphs 13 and 40 and 67 of the Reasons.

C. I only had a short time to address the barrister's points

14. The hearing started at 11.00am and finished at 5.00pm with lunch break and comfort breaks. The timetable was agreed at the outset. The hearing would ordinarily have been listed for three hours but its start time was put back to allow travel time and it ran over as time was taken to allow breaks and to check back with the parties at each stage. The Reasons explain the way in which the hearing was conducted.

15. The respondent's counsel went first so that the claimant could have time to hear the submissions and reformulate his own in response. The claimant's position was clear from his submissions as recorded in the reasons. More time to have responded to the respondent's barrister's submissions would not have changed that position.

D. My hearing began to weaken and I was exhausted

16. The claimant was asked did he require any reasonable adjustments and was asked throughout the day were any breaks needed. He did not raise his hearing as an issue and did not say he was tired. He engaged fully in his hearing.

E. There were a lot of documents in the bundle which only arrived a few days before the hearing

17. It is not unusual for a Judge to see the documents on the day of the hearing. Because this case began late, I had more time than usual to consider the bundle. I was taken to relevant documents by both the claimant and the respondent.

18. The bundle comprised documents all of which the claimant accepted he had seen before the bundle was finalised. In his letter requesting reasons and reconsideration he said *I took quite a lot of time to make a joint bundle for the hearing and I thought this would all be discussed at the hearing.* It is not unusual for there to be many documents which are not looked at during the hearing. The parties take the Judge to the relevant documents. The claimant was asked was there anything else he wished to bring to the Judge's attention at the close of his

submissions and he said no, that he was happy that he had said what he had wanted to say. He thanked me for my support.

19. In any event, the content of the bundle alone was not determinative of my application of the law on strike out. Reasons have been provided.

Conclusion

20. In reaching the decision not to reconsider I have had regard to the importance of finality in litigation for both parties and I have considered the impact of a reconsideration determination either on paper or in person for the parties and the cost to which that would put both parties.

21. I have had regard to the overriding objective to deal fairly and justly with this case. I have also considered that reconsideration should not be used to seek to obtain “a second bite at the cherry”.

Employment Judge **Aspinall**

Date: 10 August 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

8 September 2022

FOR THE TRIBUNAL OFFICE

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