



EMPLOYMENT TRIBUNALS

Claimant: Ms D Jonson

Respondent: B&M Retail Ltd

JUDGMENT

The claimant's application dated 20 June 2022 for reconsideration of the judgment sent to the parties on 14 June 2022 is refused.

REASONS

1. On 20 June 2022 the claimant applied for reconsideration of the judgment sent to the parties on 14 June 2022. The application is in time.
2. Rule 70 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("**the Rules**") provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original judgment may be confirmed, varied or revoked.
3. Rule 71 provides that applications for reconsideration shall be made either in the hearing itself or, in writing, within 14 days of the date on which the judgment is sent to the parties. Rule 72 contains the process that must be followed when an application for reconsideration is made. The first stage is for the Employment Judge to consider the application and decide whether there are reasonable prospects of the judgment being varied or revoked. If the Employment Judge considers that there are no reasonable prospects of the judgment being varied or revoked, then the application shall be refused.
4. If the application is not refused at the first stage, there may be a reconsideration hearing and the parties will be asked for their views on whether the application can be determined without a hearing. The other party will also be given the opportunity to comment on the application for reconsideration.

5. When dealing with applications for reconsideration, the Employment Judge should take into account the following principles laid down by the higher courts:
 - a. There is an underlying public policy interest in the finality of litigation, and reconsiderations should therefore be the exception to the general rule that Employment Tribunal decisions should not be reopened and relitigated;
 - b. The reconsideration process is not designed to give a disappointed party a 'second bite at the cherry'. It is "not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before" (Lord McDonald in ***Stevenson v Golden Wonder Ltd 1977 IRLR 474***);
 - c. The Tribunal must seek to give effect to the overriding objective of dealing with cases fairly and justly, which includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense;
 - d. The Tribunal must be guided by the common law principles of natural justice and fairness;
 - e. The Tribunal's broad discretion to decide whether reconsideration of a judgment is appropriate 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" (Her Honour Judge Eady QC in ***Outasight VB Ltd v Brown 2015 ICR D11***); and
 - f. The interests of both parties should be taken into account when deciding whether it is in the interests of justice to reconsider the judgment.
6. The overriding consideration when dealing with applications for reconsideration is 'is it necessary in the interests of justice' to reconsider the judgment.
7. The claimant applies for reconsideration on a number of grounds. She complains that:
 - a. The hearing was 'very rushed' and she was pressured to get the Tribunal done within two days;
 - b. The appeal hearer was cross examined on day one of the hearing;
 - c. There was no proof that the respondent had permission from the Taking of Evidence Unit for the appeal hearer to give evidence from abroad;

- d. The hearing did not deal with allegations she made about her treatment in 2019 which a previous Employment Judge had said were out of time, and which were the subject of a late appeal to the EAT;
 - e. She could not recall the appeal hearer attending the hearing on the second day;
 - f. The respondent had tried to deliberately mislead her during the hearing, and the Tribunal allowed the respondent to confuse her;
 - g. The Tribunal was biased in favour of the respondent;
 - h. The respondent's counsel was impatient and annoyed when cross-examining her; and
 - i. She was not given enough time to prepare her summing up.
8. In essence the claimant is saying in her application that she is not happy with the way in which the Tribunal hearing was conducted or with some of the conclusions reached. The reconsideration process is not designed for a party who is unhappy with the way in which a hearing was conducted to have a 'second bite at the cherry'.
9. The Tribunal has to weigh up the concerns raised now by the claimant with the interests of the respondent and the need for finality of litigation. None of the issues raised in the claimant's application for reconsideration indicate that it would be in the interests of justice for the original judgment to be varied or revoked.
10. I am satisfied that the claimant was given a fair hearing by a Tribunal which comprised not just the Employment Judge, but also two non-legal members. The claimant did not complain about feeling rushed during the hearing, and indeed was keen to press ahead with the hearing and avoid any postponements. The Tribunal took regular breaks.
11. There is therefore no reasonable prospect of the original decision being varied or revoked, and the claimant's application for reconsideration is refused.

29 June 2022

Employment Judge Ayre

JUDGMENT SENT TO THE PARTIES ON

16 July 2022

Case No: 2601557/2021

FOR THE TRIBUNAL OFFICE