



EMPLOYMENT TRIBUNALS

Claimant

Mr T Tamponi

V

Respondent

Medequip Assistive Technology Limited

JUDGMENT ON RECONSIDERATION APPLICATION

The claimant's application dated 20 September 2022 for a reconsideration of the case management order dated 5 September 2022 is refused because it is not competent and his complaint about the issues is rejected.

REASONS

1. In a Case Management Order dated 5 September 2022, the Employment Tribunal ordered:

5. Issues

On or before 6 January 2023, the respondent shall provide a draft list of issues to the claimant. These are to be agreed by **17 February 2023**.

2. In a letter to the Tribunal dated 20 September 2022, the claimant seeks reconsideration of the Order. Any application for the reconsideration of a judgment must be determined in accordance rules 70 to 74 of the Employment Tribunal Rules of Procedure 2013.

Rules

6. The relevant employment tribunal rules for this application read as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70.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.

Application

71. 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.

Process

72.— (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 chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or 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.

7. In accordance with rule 70, a tribunal may reconsider any judgment "*where it is necessary in the interests of justice to do so*". On reconsideration, the decision may be confirmed, varied, or revoked. If it is revoked it may be taken again.
8. The application of 20 September 2022 seeks reconsideration of the list of Issues, but this was a consent order to which Rule 70 does not apply.
9. The Tribunal provided in its case management orders that:

2 Complaints and issues

The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case

Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

10. The Tribunal proceeded on the basis that the claimant had an issue with the issues. It went on to consider the points made by the claimant as far as they could be understood.
11. The claimant states that that the burden of proof about the supposed fairness of his dismissal should still be on the respondent. This is not correct. The burden is neutral. The claimant states the burden of proof in regard to the discrimination claim should be shared between the two parties. The initial burden is on the claimant and thereafter it may rest on the respondent.
12. The Tribunal did not consider in detail the proposed list of issues as it seemed to contain lengthy narratives from the claimant which would not be appropriate for inclusion in a list of issues. The Tribunal also does not intend to intrude on discussions between the parties as to the contents of the list of issues as it was agreed that these would be concluded by 17 February 2023.
13. The Claimant's application for reconsideration of the order dated 5 September 2022 is refused because it is not competent and his complaint about the issues is rejected.

Employment Judge Truscott KC
Date 26 September 2022

Sent to the Parties on:
06 October 2022

For the Tribunal:
J Fernandez