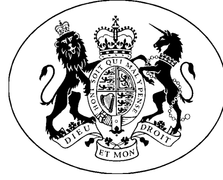

EMPLOYMENT TRIBUNALS

Claimant: Mr F Ahmed v **Respondent:** Premier Recruitment Derby

JUDGMENT ON APPLICATION FOR RECONSIDERATION

In exercise of powers contained in Rule 72 of the Employment Tribunals Rules of Procedure 2013 (**"Rules"**), the respondent's application of 28 September 2022 for reconsideration of the judgment given on 2 September 2022 is refused because there is no reasonable prospect of the original decision being varied or revoked

REASONS

1. The claimant succeeded in his complaint of unlawful deduction from wages. An additional award was made under section 38 Employment Act 2002 after a finding that no written particulars were given to the claimant during the course of his employment. The respondent seeks reconsideration of the latter award having now, it says, procured a copy of the contract given to the claimant by a third party payroll provider.

Principles of Reconsideration

2. When approaching any application, and during the course of proceedings, the tribunal must give effect to the overriding objective found at *Rule 2 Employment Tribunals Rules of Procedure 2013*. This says:

   "2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

   (a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
(c) avoiding unnecessary formality and seeking flexibility in the proceedings;
(d) avoiding delay, so far as compatible with proper consideration of the issues; and
(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

3. The power to confirm, vary or revoke a judgment is found at *Rule 70*. That provides that a judgment can be reconsidered *"if it is in the interests of justice to do so"*. Rule 71 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration is made in time.

4. Rule 72 (1) of the Rules provides:

   "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. …"

5. Where an Employment Judge refuses an application following the application of Rule 72(1), then it is not necessary to hear the application at a hearing. Rule 72(3) provides that the application for reconsideration should be considered in the first instance, where practicable, by the same Employment Judge who made the original decision. I am the judge who made the decision in respect of which the respondent makes his application for reconsideration.

6. The interest of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which much be regarded against the interests of justice (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*).

7. In *Brown*, Her Honour Judge Eady QC said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation. This was an expectation outlined by Mr Justice Phillips in *Flint v Eastern Electricity Board [1975] ICR936*, who said *"it is very much in the interests of the general public that proceedings of this kind should be as final as possible"*. He also said it was unjust to give the loser in litigation a *"second bite of the cherry"* where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points and bring additional evidence or information which would overcome the reasons given for the loss.

8. Consequently, the provision of evidence said to be relevant *after the conclusion of the hearing* will rarely serve to alter or vary the judgment given unless the party seeking to introduce the evidence can show (*Ladd v Marshall [1954] EWCA Civ 1*):

    8.1. the evidence could not have been obtained with reasonable diligence for use at the trial;

    8.2. the evidence would probably have an important influence on the result of the case; and

    8.3. the evidence must be apparently credible.

Grounds and reasons of reconsideration application

9. The application for reconsideration is made on the basis that the respondent was not as prepared as it perhaps should have been to deal with the claimant's allegation that he had never been provided with written particulars of his employment. Having made enquiries of the payroll provider after the hearing, the respondent now produces a contract of employment bearing the party's names and with the name of the claimant typed into the signature box.

10. The claimant resists the application for reconsideration, and states that he has never seen this new document or signed it. He alleges that the document has been forged with a typed signature in it in order to provide to the tribunal after the hearing in an effort to avoid paying part of the judgment.

Decision on the reconsideration application

11. The claimant's claim that he had been given no written particulars of employment was clearly foreshadowed in the documents he supplied in advance of the hearing. The respondent was, in my view, on notice of the issue and had the opportunity to seek out evidence that countered the claimant's allegation and to introduce that evidence during pre-hearing disclosure. It is notable that the respondent did not, in the hearing, confirm that the claimant had been sent particulars of his employment. The respondent's position on the point was more circumspect with reference made to a third party payroll provider.

12. In my judgment, the respondent is now seeking to have a second bite of the cherry by providing evidence which could have been provided prior the hearing which led to the award being made. The document pre-dates the hearing. Even if the document was not in the possession of the respondent, then it could with reasonable diligence have been obtained by the respondent ahead of the hearing. The respondent knew it used a third party payroll provider. The respondent told me in the hearing that that provider would usually deal with paperwork. It appears that no such enquiries were made.

13. The document provided is also disputed and is not accepted by the claimant. I cannot therefore take it at face value that the document is agreed or genuine. It does not alone, on the face of it, represent evidence which automatically leads me to conclude that my judgment would have been different if it had been presented at the hearing.

That determination would only be made after hearing live evidence about it at the hearing. The hearing has now happened.

14. It is not the purpose of reconsideration to allow a party to dispute a determination that a party disagrees with, especially where evidence is subsequently provided which should have been provided prior to the case being determined. It is a fundamental requirement of litigation that there is certainty and finality. If conclusions made are disputed with regard to whether a correct interpretation of the law was made, they are matters for an appeal which the respondent is able to make to the Employment Appeal Tribunal.

15. In view of the above determination of this application, the original judgment still stands and the respondent must pay the sum outlined within the time period set out in the documents accompanying that judgment.

Employment Judge Fredericks

11 October 2022