



EMPLOYMENT TRIBUNALS

London South Employment Tribunal on 17th August 2022

Claimant

Between

Respondent

Mr Michael Gordon

&

Sutton and Cheam Limited

Before

Appearances

Judge M Aspinall (Sitting as an Employment Judge)

Mr M Gordon (in person) via telephone
No appearance by the Respondent

APPLICATION FOR RECONSIDERATION Judgment

1. By an email received at the Tribunal office at 10:55 on 7 October 2022, the Respondent reported that they wished to appeal the decision that I made on 17 August 2022. That email was not copied to the Claimant.
2. The judgment in question (from 17 August 2022) was sent, via email, to the parties at 16:05 on 26 August 2022. There is no record of it being returned as undeliverable or any other error in delivery.
3. Gary Worsfold, for the Respondent, notes in his email of 7 October 2022 that he has "...told you on numerous occasions I cannot access this email account regularly, please use... I wish to appeal to the judgement...".
4. Given that this email was sent to the Employment Tribunal, I am treating it as an application for me to reconsider my decision of 17 August 2022.
5. Rule 70 of The Employment Tribunals Rules of Procedure 2013 (as amended) provides that "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."
6. Rule 71 of the same rules provides "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 ... and shall set out why reconsideration of the original decision is necessary.**" (my emphasis added).
7. In this case, the decision was sent to the parties on 26 August 2022. It was 42 days later, on 7 October, that the Respondent belatedly wrote to the Tribunal.
8. Even allowing that the Respondent does not often access the email account, as they stated in their email, they can and did access that email account. This is self-evident from the fact that they have received the decision and responded to the email to which it was attached.

9. I note that on 17 August 2022, the Respondent's Director (Mr Worsfold) was contacted by my Clerk and gave a reason why he had not attended the hearing before me (see paragraphs 2 and 3 of my 17 August judgment). It was open to him to ask for a short delay on that day to allow him to attend and he chose not to do so.
10. In his application for reconsideration, the Respondent has offered no material upon which any reasonable Tribunal would be likely to reconsider an earlier decision. Indeed, the email from Mr Worsfold contains a bare assertion regarding his opinions of the Claimant and the claims. That is not evidence or material which would be pertinent or was not previously available. It is the Respondent's opinion and no more than that.
11. I have also looked at whether the Respondent advances any reasonable excuse for applying to the Tribunal - for reconsideration - so late. Any such application needed to be made by 9 September 2022 (14 days after the judgment was successfully sent to the parties by email).
12. Apart from the single line that they do not access the email account used frequently and had provided an alternative, I can see no reason that has been provided for such a lengthy delay. As I have recorded above, although the Respondent does not often access the email account, they do access it. Even if I were to accept that the infrequent access to the email account was a good reason for delay (which I do not; given the lack of any delivery failure or automatic reply - the Tribunal was entitled to consider the judgment to be properly served) the Respondent has applied 28 days beyond the time limit.
13. **My decision**
The Respondent has sought a reconsideration 28 days out of time and has provided insufficient reason why they could not have made such an application in time. In any event, even if the application was in time, I am not satisfied that the application made demonstrates any good reason, and provides no admissible evidence or material, which would lead to a reconsideration of the underlying judgment. I also take note that the Respondent failed to copy his application (email) to the Claimant in breach of the requirements of Rule 71. **It follows that I refuse the application and confirm my judgment of 17 August 2022.**

Judge M Aspinall on Thursday, 20th October 2022