EMPLOYMENT TRIBUNALS

Claimant: Mr K Ramezany
Respondent: David Wood Baking Limited

Judgment was sent to the parties on 6 September 2022. By e-mail on 30 September 2022 the claimant has applied for reconsideration of the judgment.

JUDGMENT

The claimant's application is refused.

REASONS

Relevant law

1. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so".
2. By rule 71, an application for reconsideration must be presented in writing and copied to all the other parties within 14 days of the date on which the written record of the original decision was sent to the parties. (Rule 71 also provides for exceptions to this rule, but none of the exceptions apply in this case.)
3. The time limit specified in rule 71 can be extended, either on the claimant's application or on the tribunal's own initiative, whether or not the time limit has already expired.
4. Rule 6 allows a tribunal to waive a procedural requirement of the rules (including rule 71) if a party has not complied with it.
5. Rule 72(1) states that an employment judge must consider any application made under rule 71. The rule continues:

   > "If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked … the application shall be refused…"

6. The discretion to act in the interests of justice is not open-ended. There is a public interest in the finality of judgments. That public interest militates against

the reconsideration discretion being exercised too readily: *Ministry of Justice v. Burton* [2016] EWCA Civ 714.

Procedural history

7. There was a hearing on 2 September 2022. It took place on a remote video platform. Mr Solhjoo attended as an interpreter, as the claimant's first language is Farsi.

8. Before I heard the evidence, I made a number of disputed case management decisions. As well as explaining these decisions out loud and giving reasons, I posted my decisions into the chat function in the side panel of the virtual hearing room. Mr Solhjoo translated them for the claimant. They were also e-mailed separately to him.

9. At the conclusion of the hearing, I announced my judgment and gave oral reasons. I explained the procedure for requesting written reasons – in particular that the parties would lose the right to written reasons unless they made a request at the hearing or made a request in writing within 14 days of the written judgment being sent to the parties. My decision was also posted into the chat function and translated for the claimant.

10. The signed judgment and written case management order were sent to the parties on 6 September 2022. Both documents explained the procedure for requesting written reasons. The judgment was accompanied by a letter clearly setting out the deadlines for requesting written reasons and requesting reconsideration.

11. On 24 September 2022, the claimant e-mailed the tribunal. This is what he wrote:

> "I regarding about my appeal.
>
> I cant to open my application and send it back.
>
> So is anyone can help me please. Thanks"

12. The claimant e-mailed the tribunal again on 30 September 2022. His e-mail read:

> "Reconsideration reasons to the Employment Tribunal:
>
> There are couple of reasons make me to request for reconsideration as followed:
>
> 1. During tribunal the interpreter's call was frequently cut off and I could not understand the judge's words very well.
> 2. Initially, judge advised to give me a chance and adjourn the court to another session so that I could submit more complete documents, but he has changed his mind.
> 3. Despite I had a letter from GP confirming that I was away from work for six weeks because of medical issues, the judge ignored to look at my evidence.
> 4. Although the company manager signed my leave sheet, the judge did not accept this and considered as illegal evidence.
> 5. However, there is a witness from the company declaring that there was no evidence that I had a verbal or physical conflict with anyone

> after even checking the CCTV, the judge still believed a lady's allegation and didn't attention to witness statements and CCTV.
>
> 6. As it appears from correspondence, the company cancelled my contract before end of my leave which it seems illegal according to the Employment Law. But again this is not considered by judge.
>
> I would therefore humbly request you to reconsider my application on behave of the reasons I provided. I will, however, respect your decision."

13. The e-mail was not copied to the respondent. There was nothing in the e-mail to suggest that it had been sent to the respondent separately.

Conclusions

14. The last day for applying for reconsideration was 20 September 2022.

15. The claimant's application was presented ten days too late.

16. The application did not comply with rule 71 in that it was not copied to the respondent.

17. I have considered whether or not to extend the time limit and waive the requirement for the application to be copied. In my view, taking that course would not help to achieve the overriding objective and would be contrary to the public interest in finality of judgments.

18. Some of the delay appears to be explained by the claimant experiencing technical difficulties and awaiting help from the tribunal. But by the time he sought help, it was already four days after the deadline had expired.

19. The effect of the delay has been compounded by the fact that the respondent did not receive a copy of the application. This means that the respondent has not had the chance to address its mind to the reconsideration grounds at an early stage. Often, this does not put the respondent at any real disadvantage. On its own, the failure to copy in the respondent would rarely be a sufficient ground for refusing a reconsideration application – the more proportionate step would usually be simply to forward the application on to the respondent or to order the claimant to do so. But here, I consider that the respondent has been put to a significant disadvantage by not being copied into the application. This is because some of the grounds for reconsideration relate to things that happened in the final hearing. In particular, there is a reference to things said during periods of time when the interpreter had dropped out. There is no audio or visual recording of the hearing, so the parties would have to rely on their notes and memories of what happened. In certain circumstances the Employment Appeal Tribunal can order production of the employment judge's notes, but these are not a word-for-word account. One of the purposes of the requirement to copy in the respondent is so that the respondents' representatives can look into allegations of things that happened during the hearing whilst the hearing is still fresh in their minds.

20. In any case, I do not consider that there is any reasonable prospect of my revoking or varying my judgment.

21. Dealing with each of the claimant's reconsideration grounds:

21.1. Mr Solhjoo did drop out of the hearing a number of times. This led to gaps in the hearing whilst the claimant was in the virtual hearing room without an interpreter. I do not remember every word that was said during those gaps, and my notes do not provide the complete answer. From memory, the conversation was directed towards trying to get Mr Solhjoo back into the hearing. I am sure that we did not discuss the issues in the case, or any evidence without an interpreter present. I did not base my decision on anything that was discussed during those times.

21.2. I gave the claimant the opportunity to apply for an adjournment. Having heard the arguments on both sides, I refused his application. The claimant has not put forward any new argument for suggesting that the adjournment should have been granted.

21.3. I looked at the claimant’s evidence. It included a fit note from his general practitioner. The note was dated 7 December 2021. It certified that the claimant had been unfit for work from 11 October 2021 to 8 November 2021. I took the fit note into account, but it only had limited relevance to the issue I had to decide. The question for me was not whether the claimant was fit to work during that period. The issue was whether he was an employee or not. A fit note does not, by itself, reinstate a contract that has been terminated.

21.4. I did not think that the leave sheet was illegal evidence. I just did not think it supported the claimant’s case. His contention was that the respondent signed the sheet to authorise annual leave. My finding was that the signed document was a refusal of leave, rather than an authorisation of it.

21.5. I did not accept “the lady’s allegation”. The claimant has misunderstood the judgment. I found that the claimant had not repudiated the contract. Although the written judgment is expressed in legal language, I explained it at the hearing as simply as I could. The claimant had not committed gross misconduct. The respondent had not proved to me that the claimant had done anything seriously wrong during the incident which led to his dismissal.

21.6. Again, Ground 6 appears to be based on a misunderstanding. I found that the claimant’s contract had been breached. I did not ignore the illegality. What I did was to try and assess the loss that had been caused to the claimant by the failure to give notice. I found that there had not been any loss because he was paid for his notice period.

22. The reconsideration application is therefore refused.

Employment Judge Horne
14 October 2022

SENT TO THE PARTIES ON
31 October 2022

FOR THE TRIBUNAL OFFICE