



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr C Coxswain

Otium Services and Facilities Ltd

Employment Judge Matthews

Judgment on Application for Reconsideration

Acting in accordance with rule 72 of the Employment Tribunals Rules of Procedure 2013 (the “Rules”) the Employment Judge refuses Mr Coxswain’s application for a reconsideration of the Judgment sent to the parties on 16 September 2022 (the “Judgment”). The Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked.

Reasons

Introduction and applicable law

1. The Employment Judge must consider this application by reference to rules 70, 71 and 72 of the Rules. So far as they are applicable they read as follows:

“70 Principles

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.

71 Application

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.

72 Process

(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 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."

2. On 16 September 2022 the Judgment was sent to the parties. The Judgment recorded that Mr Coxswain had failed to attend a telephone case management conference on 13 September 2022. At the time, the Clerk telephoned Mr Coxswain who said that he had not received the notice of hearing. When asked to join the hearing, Mr Coxswain said that he could not speak to the Employment Judge that day and asked that the case management conference be relisted.

3. The Judgment ordered Mr Coxswain to send a written explanation of his failure to attend confirming whether or not he wished to pursue his claims on or before 31 October 2022. If Mr Coxswain did not do so, his claims would stand dismissed without further order. No such written explanation was received from Mr Coxswain.

4. As matters stand, therefore, Mr Coxswain's claims have been dismissed.

5. On 7 November 2022 Mr Coxswain sent a short e-mail to the Bristol office of the employment tribunals. It reads:

"Please note that I was unaware of the case hearing which was set for the 13th of September 2022 due to the fact that I was unaware of the proceedings. I have also been dealing with severe health issues over the past year which have taken a toll on my mental health. I intend to pursue this matter to the very end, especially since it contributed to my homelessness."

The Employment Judge is treating this e-mail as an application for reconsideration lodged outside the 14 day time limit. In exercise of the power conferred by rule 5 of the Rules, the Employment Judge extends time to enable Mr Coxswain's letter to be so considered.

6. There is a further procedural problem in considering Mr Coxswain's letter as an application for reconsideration in that it does not appear to have been copied to the Respondent. The Bristol office of the employment tribunals will arrange for this to be done.

Conclusions

7. Mr Coxswain has shown a disregard for time limits on at least one previous occasion, as recorded in the Judgment. As far as the case management hearing on 13 September 2022 is concerned, Mr Coxswain did not attend it, declined to join it and has since failed to provide an explanation as required and within the time limit set in the Judgment. The e-mail, that Mr Coxswain has now sent in, fails to explain why he could not join the case management conference when invited to do so. The manner in which Mr Coxswain has conducted these proceedings appears to the Employment Judge to be unreasonable and he has not complied with at least two orders of the employment tribunals.

8. Accordingly the Employment Judge refuses the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Matthews
Date: 8 November 2022

Judgment sent to the parties: 15 November 2022

For the Tribunal Office