EMPLOYMENT TRIBUNALS

Claimant:	Mr S Tempesta	
Respondent:	Holtwhites Hotel and Daycare Centre (an unincorporated partnership)	(1)
	Ioana Baciu	(2)
	David Gonzalez	(3)
	Paul Buxton	(4)
	Sawas Michael	(5)
	Holtwhites Ltd	(6)

JUDGMENT

The claimant's application for reconsideration of the judgment, sent to the parties on 17 August 2021 is refused as it has no reasonable prospects of success.

REASONS

1. Rules 70-72 of the Tribunal Rules provides 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.
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> 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.
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> 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 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, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, 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.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1) requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

4. Under the current version of the rules, there is a single ground for reconsideration — namely, “where it is necessary in the interests of justice”. This contrasts with the position under the 2004 rules, where there specified grounds upon which a tribunal could review a judgment.

5. When deciding what is “necessary in the interests of justice”, it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

6. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. In the new version of the rules, it had not been necessary to repeat the other specific grounds for an application because an application relying on any of those other arguments can still be made in reliance on the “interests of justice” grounds.

7. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were

exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

8. In this case, I gave judgment and oral reasons on the day of the preliminary hearing. I also produced a separate case management and summary document. These were sent to the Claimant on 17 August 2021.

9. The Claimant submitted an email dated 26 October 2021, seeking written reasons which he said he needed in order to appeal. Written reasons were produced, dated 11 November 2021, and sent to the parties, along with some case management orders.

10. On 4 December 2021, the Claimant wrote to the Tribunal, without (as far as I know) copying in the Respondent.

11. On 28 February 2022, the Respondent wrote to the Tribunal, forwarding copies of some emails sent by the Claimant to the Respondent and the Tribunal.

12. On 28 February, I made the following decision. Although the paper file is slightly unclear, as far as I can tell this was sent to the parties at 12:48 on that date:

> Employment Judge Quill has considered the Respondent's application dated 28 February 2022 (which included copies of correspondence between the parties).
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> The hearing remains listed in person as per the orders made at the preliminary hearing. Any application for strike out can be made at the outset of the hearing, if pursued.
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> My written reasons for the decisions for the case management decisions at the hearing and for the judgment sent to parties on 17 August 2021 were both sent to parties on 29 November 2021. In those documents, I noted that the Claimant had said that he would potentially make an application for me to reconsider and said that, if that was his intention, he would need to write to tribunal with copy to the Respondent within 14 days.
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> The Claimant does not appear to have done that. I note that he sent an email to the tribunal on 4 December 2021, which was not copied to the Respondent. I do not necessarily regard his email of 4 December 2021 as an application for reconsideration. However, to the extent that that was the Claimant's intention, there are no reasonable prospects of my decisions being changed and the application is refused.

13. On 28 February 2022, at 14:28, the Claimant wrote to the Tribunal, without (as far as I know) copying in the Respondent. For present purposes, I will say no more than that one of the sentences started, "Please consider this

email as a formal request to reconsider your decisions, …". Both before and after that, the words used make clear that the Claimant strongly believes that (a) my decisions were wrong and (b) that I should change my decisions. However, nothing written in the email specifically engaged with the reasons that the claims were dismissed (or the reasons that the amendments were refused).

14. Nothing in the Claimant's email of 28 February 2022 (or 4 December or 26 October 2021) causes me to think that the decisions at the preliminary hearing, or the reasons for them, were incorrect.

15. For the reasons stated above, having considered the Claimant's application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked, and the application is refused.

Employment Judge Quill

Date: 16 November 2022

JUDGMENT SENT TO THE PARTIES ON

18 November 2022

L TAYLOR-HIBBERD

FOR THE TRIBUNAL OFFICE