



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr T Mohammed

v

Crown Prosecution Service

Heard at: Reading

On: 5 to 9 September 2022

Before: Employment Judge Hawksworth
Mrs D Ballard
Dr C Whitehouse

Appearances:

For the Claimant: In person

For the Respondent: Ms L Robinson (counsel)

JUDGMENT (RECONSIDERATION OF JUDGMENT ON STRIKE OUT APPLICATION)

The claimant's application for reconsideration of the judgment refusing his application to strike out the respondent's response, is refused under rule 72(1).

REASONS

1. On 5 September 2022, at the start of the full merits hearing, the claimant applied to strike-out the respondent's response under Rules 37(1)(c), (1)(d) and (1)(e) of the Employment Tribunals Rules of Procedure 2013.
2. We refused the application. We gave our judgment and reasons on the strike out application at the hearing. Written reasons were requested by the claimant and these were sent to the parties on 4 October 2022.
3. On 11 October 2022, in an email, the claimant made an application for reconsideration of our decision, in a document called 'Reconsideration applications'. Pages 1-5 of that document (paragraphs 1-25) set out the claimant's reconsideration application.
4. In the same email, the claimant also sent a document called 'Request for further and better reasons' in which he set out eight questions, seeking more information about the written reasons sent to the parties on 4 October 2022.

The rules on reconsideration

5. Rule 70 of the Employment Tribunal Rules of Procedure 2016 says:

“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. The requirement that a judgment may only be reconsidered where reconsideration is necessary in the interests of justice reflects the public interest in the finality of litigation.

7. Rule 71 says that an application for reconsideration must be made in writing within 14 days of the date on which the original decision was sent to the parties. Rule 72 explains the process to be followed on an application for reconsideration under rule 71. It says:

“(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.”

Conclusions on the claimant’s application

8. The claimant’s application for reconsideration complied with rule 71 as it was made within the required 14 days of the date on which the judgment and written reasons were sent to the parties.
9. Rule 72(1) requires me to consider whether there is any reasonable prospect of the original decision being varied or revoked, that is whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice.
10. I have considered the points raised by the claimant in his reconsideration application. I have also considered the questions he has raised about the strike out application in his request for further and better reasons.
11. None of these points lead me to conclude that there is any basis to vary or revoke the original decision not to strike out the response. For reconsideration to be granted, there must be some ground which makes it necessary in the interests of justice to vary or revoke an earlier judgment. There is no such ground here. The points made by the claimant were considered by the tribunal at the time the decision was made, or were points that could have been made by the claimant at the time of his application.
12. In any event, at this stage of the proceedings, even if the response were struck out, the effect of this would be limited. Rule 37(2) says that the effect of striking out a response ‘shall be as if no response had been presented, as set out in rule 21’. Rule 21 says that where no response is presented, a judge shall decide whether a determination of the claim can be made without a hearing. If a hearing is required, the respondent is only entitled to participate in the hearing to the extent permitted by the judge. In this case, the full hearing has already taken place and the respondent has participated in the hearing. It is too late to decide that the respondent should not be allowed to participate in the hearing.
13. The tribunal has reserved judgment and will reach its decision on the basis of the evidence it has heard and read.
14. Having considered the claimant’s application, I have concluded that the interests of justice do not require a reconsideration of the judgment on strike out. There is no reasonable prospect of the original decision being varied or revoked. The claimant’s application for reconsideration is therefore refused under rule 72(1).

Employment Judge Hawksworth

Date: 14 November 2022

Sent to the parties on: 23 November 22

For the Tribunal Office

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