



EMPLOYMENT TRIBUNALS

Claimant: Mr P Z Bagayogo

Respondent: Cedar Recruitment

UPON APPLICATION made by letter dated 25 October 2022 to reconsider the judgment dated 21 September 2022 under rule 71 of the Employment Tribunals Rules of Procedure 2013

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The application for reconsideration is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Oral reasons were given to the parties at the hearing on 21 September 2022. The judgment was sent to the parties on 17 October 2022. I concluded that the claim for breach of contract was out of time.
2. On 25 October 2022, the claimant wrote to the Tribunal seeking a reconsideration of my judgment. He says the following, amongst other things:

By the name of God, the Almighty, the Master of Skies and Earth the justice must be done and prevailed.

I would like the honourable Judge, A.M.S. Green to reconsider the judgment in the interests of justice as it was not reasonably practicable for claims to be presented before the end of the deadline for followings:

It was obvious my intention was to make claim to the Employment Tribunal within time limits that is the reason I have contacted ACAS

as required.

I have made claims the first day I heard from ACAS that the certificate was issued to me by email. The document was sitting on junk email.

I have had contracted COVID19, was abroad in bed several weeks, I had been reaching ACAS out by phone and emails for updates in negotiation with respondent. When I have managed to speak to ACAS, I was advised that the certificate was issued to me, I checked my emails, no document was received, I checked my junk email and the document was received. before my telephone conversation with ACAS, I was not aware that the certificate was issued.

... [reference to a case]

I have a genuine mitigation circumstance for an extension as I was unwell with COVID19 and I was not aware that the certificate was issued to me.

I have been a victim of employment agency bad practices, the respondent team have admitted that their client have poorly treated me during the Assignment. However, they are relying on "money power" with a good legal team to succeed, I trust British Court of Law for justice to prevail.

I have already advised ACAS and respondent, my motivation is not financial, I just want justice. I require my one week notice pay as per contract, any award from the case, I will give it to British Heart Foundation.

Thank you for your time and understanding.

3. I have carefully considered the contents of the claimant's application.
4. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, provides as follows:

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) 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. 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 (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.”

5. The previous Employment Tribunal Rules (2004) provided a number of grounds on which a judgment could be reviewed. The only ground in the 2013 Rules is that a Judgment can be reconsidered where it is necessary in the interests of justice to do so. I consider that the guidance given by the Employment Appeal Tribunal in respect of the previous Rules is still relevant guidance in respect of the 2013 Rules. It was confirmed by Eady J in **Outsight VB Ltd v Brown UKEAT/0253/14/LA** that the basic principles still apply.
6. There is a public policy principle that there must be finality in litigation and reviews are a limited exception to that principle. In the case of **Stevenson v Golden Wonder Limited [1977] IRLR 474** makes it clear that a review (now a reconsideration) is not a method by which a disappointed litigant gets a “second bite of the cherry”. Lord McDonald said that the review (now reconsideration) provisions were

Not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before.

7. In the case of **Fforde v Black EAT68/80** where it was said that this ground does not mean:

That in every case where a litigant is unsuccessful is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order.

8. In the interest of justice means the interest of justice to both sides. The Employment Appeal Tribunal provided guidance in **Reading v EMI Leisure Limited EAT262/81** where it was stated:

When you boil down what is said on (the claimant's) behalf it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, 'justice' means justice to both parties.

9. During the hearing I concluded that the claimant had ample opportunity to explain why he could not present his claim in time and failed to do so for the following reasons:
 - a. The respondent's solicitor wrote to the claimant on 12 April 2022 asking him for information about the basis upon which he was seeking to extend time to pursue his claim before the Tribunal. At the hearing, the claimant told the Tribunal that he had received the letter. He did not provide the relevant details that were requested.
 - b. The respondent's solicitor wrote to the Tribunal, copied to the claimant, on 27 May 2022. The letter cross referred to an earlier letter in which the claimant was requested to provide more information about the basis upon which he sought an extension of time to pursue his claims before the Tribunal. The claimant told the Tribunal that he had received the letter. He did not provide the information that was requested.
 - c. The claimant did not provide a witness statement despite being informed by the Tribunal in a letter dated 15 September 2022 which required statements to be sent to the Tribunal at least two working days before the hearing. At the hearing I asked the claimant to tell me why he had not provided the respondent and the Tribunal with a witness statement. He told me that he had nothing to add to what he had set out in his application (i.e. his particulars of claim set out in his claim form). He said that he did not need to add anything that he had said. He told me that whilst he could not afford to instruct a solicitor, he had taken advice from the citizens advice bureau. He also gone through the ACAS early conciliation procedure. He taken some advice on his claim. He did not provide any reasons why it was not practicable to present his claim in time and whether the claim was presented within such further period of time as was reasonable. He relied upon his particulars of claim which say nothing about the timeliness of the claim and why time should be extended.

10. I have considered this application carefully. I have reached the view that a hearing is not necessary in the interests of justice. The claimant is now seeking to rely on evidence which was available before. There is no reasonable prospect of the judgment being varied or revoked and the application for a reconsideration is refused.

Employment Judge **Green**
26 October 2022