



EMPLOYMENT TRIBUNALS

Claimant: Mr A Mehmood

Respondent: Secretary of State for Justice

RECONSIDERATION JUDGMENT

The claimant's application made by email dated 4 October 2022, for reconsideration of the judgment sent to the parties on 21 September 2022, is refused.

REASONS

1. The Tribunal has undertaken preliminary consideration of the claimant's email to the Tribunal of 4 October 2022 and accompanying 13-page attachment. The attachment contains the claimant's application for reconsideration of the strike out judgment sent to the parties on 21 September 2022.
2. It is unclear if it also seeks reconsideration of the deposit order judgment of the same date. For the avoidance of doubt, it has been treated as if it does.

The Law

3. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).
4. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.
5. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily”

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. The claimant’s application appears to be made a number of different grounds. These are discussed in turn below.

8. Full Tribunal Panel Ground

- a. The claimant asserts that if he had been aware he could have requested the strike out applications be heard by a full tribunal panel rather than a judge alone, he would have done so.
- b. The question of whether any of the claimant’s claims would be subject to strike out and/or deposit order decisions was raised at the first day of the preliminary hearing on 11 March 2022. It was confirmed that this would be considered at the conclusion of a discussion to identify the claimant’s claims. The consideration of strike out and/or deposit orders occurred at the hearing on 14 June 2022, the third hearing day.
- c. Based on the above, the claimant had been aware that this would occur since March 2022. No request that a full panel consider the strike out and/or deposit order applications was made by the claimant. Such a request cannot be made after the event. In any event, it is unlikely that such a request would have been granted for a hearing of this nature.
- d. Accordingly, it would not be in the interests of justice to reconsider the decision based on this ground.

9. Public Hearing Ground

- a. The claimant suggests that the determination of the respondent’s application to strike out his claim was done in a private rather than public hearing.
- b. The applications for strike out and deposit orders occurred in the afternoon of 14 June 2022. The morning of the hearing was a conclusion of the private case management discussion which had occurred over two prior days. It is the recollection of the Tribunal that, as is required in such a situation, the

parties were then informed that the hearing was from that point a public hearing.

- c. Accordingly, the consideration and determination of the respondent's strike out and / or deposit order applications did not occur in a private hearing.

10. *Anxiety and Depression Ground*

- a. The claimant has suggested that his ability to participate in the hearing on 14 June 2022 was impacted by a diagnosis of severe anxiety and depression.
- b. The Tribunal has no note or recollection of this being raised before or at the hearing.
- c. The claimant appeared to participate in the hearing as effectively as he had in the earlier hearings on 11 March 2022 and 25 April 2022.
- d. By 14 June 2022 the claimant was fully aware of what a CVP preliminary hearing would require of him as an unrepresented party. The claimant did not raise his health as a reason for not proceeding with the hearing. The claimant could have done so. Regardless, as noted, the claimant did engage with the hearing, and successfully argued against some of the applications relating to specific parts of his claims, resulting in either no order or a deposit order rather than the sought strike out order.
- e. Accordingly, it would not be in the interests of justice to reconsider the decision based on this ground.

11. *Substantive Grounds*

- a. At the hearing a number of applications for strike out, or in the alternative deposit orders, were considered. The applications were all made by the respondent.
- b. Each of these applications was considered individually. The claimant was invited to make representations regarding each application. The claimant did so. The claimant was guided by the Tribunal to the points in the applications that were of concern to the Tribunal and was expressly invited to address those points in particular if they had not already been addressed by the claimant.
- c. Such matters were not technical legal points, but fundamentals to the basis of the claimant's claims. Accordingly, the claimant was given, and took, the opportunity to raise factors which he considered mitigated against strike out and/or deposit orders being made.
- d. The applications all related to allegations that had been raised and discussed in detail over the course the 2½ days of case management discussions. At

the conclusion of both the first and the second day of case management discussion, and in each case well before the next day on which a case management hearing occurred, a detailed and comprehensive note was produced by the Tribunal setting out the details of the allegations discussed and the conclusions of those discussions to that point. The claimant was invited to comment on those notes at or before the next day of hearing, and on each occasion did so, making minor amendments and corrections that were then accepted.

- e. During those discussions the claimant was made aware, as they occurred, which allegations were likely to be subject to strike out or deposit order consideration.
- f. The claimant in his reconsideration application has raised various factual assertions about events. These were all either raised at the hearing (both in earlier discussion and then again during the consideration of the strike out and/or deposit order applications) or they could have been. The purpose of a reconsideration application is not to give a party a second chance to argue their claim.
- g. Accordingly, it would not be in the interests of justice to reconsider the decision based on this ground.

12. *A Previous Judge 'Allowed the Claims' Ground*

- a. The claimant attended an initial case management hearing before Judge B Hodgson. The claimant suggests that because Judge Hodgson did not strike out his claims, he had allowed them to continue such that they should not be struck out now.
- b. The claimant is in effect suggesting that if claims are not struck out at an initial preliminary hearing, they are in some way implicitly accepted as having some reasonable prospects of success. This is simply not correct.
- c. In any event, at the point the respondent's applications for strike out were made, the Tribunal and parties had for the first time a clear and definitive list of the claimant's claims. It is entirely correct and appropriate, if not required, for justice to be done, that as the parties and Tribunal's understanding of the claims being pursued improves there should be consideration of whether the claims should be struck out or made subject to a deposit order. This can be on the application of a party (as in this case) or on the Tribunal's own initiative.
- d. Accordingly, the fact that the allegations were not struck out at an earlier hearing does not form a basis for reconsideration of the judgement reached on the respondent's applications.

**Case Numbers: 2402756/2021
2415177/2021
2413460/2020**

Conclusion

13. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original strike out judgments being varied or revoked. The application for reconsideration is therefore refused.

Employment Judge Buzzard
14 November 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
1 December 2022

FOR THE TRIBUNAL OFFICE