



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4110531/2021

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Held in Glasgow on 1 December 2022

Employment Judge D Hoey

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Mr L Ramos

Claimant

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Lady Coco Ltd t/a

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The claimant's application dated 30 November 2022 for reconsideration of the judgment dated 24 November 2022 refusing the claimant's application for a preparation time order as it had been lodged outwith the 28 day time limit set out in rule 77 is successful and the judgment dated 24 November refusing the claimant's application is revoked.

2. The respondent is given 14 days from today (namely until 16 December 2022) to make comments upon the application in writing and confirm whether or not a hearing is requested or whether the application is to be determined in chambers.

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REASONS

Background

1. This case has a long procedural history, having been raised in 28 July 2021. A hearing took place on 14 and 15 September 2022, with the claim being

dismissed. An oral judgment was issued with written reasons being provided upon request. A preparation time order was granted against the claimant, with an oral judgment being given on 15 September 2022 and written reasons provided to the parties upon the claimant's request.

- 5 2. The claimant sought a preparation time order against the respondent by email dated 10 November 2022. In judgment dated 24 November 2022 the application was refused as out of time, there having been no reasons given why the application was made when it was in light of the time limit.
3. By email dated 30 November 2022 the claimant has sought reconsideration of
10 that decision.
4. The judgment finally determining the proceedings was sent to the parties on 16 September 2022.

The application

5. The claimant seeks a preparation time order against the respondent because
15 "the respondent misconducted by failing to comply with the two Disclosure Orders: this of Judge MacLean dated 09 August 2022 and this of Judge Hoey dated the 29 August 2022". The claimant states that he had to do additional work in August and September 2022 as a result of the failure of the respondent.
- 20 6. In his reconsideration application the claimant notes that he had raised an application in an earlier communication. During the course of the Hearing the claimant had sent an email on 15 September 2022. That was the claimant's response to the respondent's application for a preparation time order. It also included (at the end of the document) an application for a preparation time
25 order himself in respect of the respondent's failure to send to him the advert when ordered to do so.

The rules and their application

7. In terms of rule 77 a person may apply for a preparation time order at any stage up to 28 days after the date on which the judgment finally determining

the proceedings in respect of that party was sent to the parties.

8. As the judgment finally determining the proceedings was sent to the parties on 16 September 2022, the claimant had until 17 October 2022 to make any such application. While the claimant renewed his application on 10 November 2022 (almost 8 weeks after the judgment was issued) the claimant had in fact made an application during the course of the hearing, which had not been raised by the claimant during the hearing.

The law

9. 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).

10. 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.

11. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and another [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; and in Lindsay v Ironsides Ray and Vials 1994 ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.”

12. Similarly, in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the Employment Appeal Tribunal chaired by Simler P said in paragraph 34 that:

“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”

13. 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.

This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication. It is also important to recognise that fairness and justice applies to both parties – the claimant and the respondent.

14. In all the circumstances it is in the interests of justice to revoke the judgment of 24 November 2022 and allow the application to be considered. The application was made in time. It was due to an oversight that the claimant’s application which was made in time, had not been identified.

Conclusion

15. I considered the overriding objective in reaching my decision to ensure the decision taken was fair and just. That applies to both the claimant and the respondent since justice requires to be achieved for both parties. I have done so carefully.

16. Having considered the full factual matrix I have decided that it is just to allow the claimant’s reconsideration application.

17. The claimant's application for a preparation time order against the respondent in respect of the alleged failure of the respondent to provide the advertisement as ordered is permitted to proceed. The respondent is given 14 days to respond to the application (or seek a hearing to consider the matter). If the respondent is content that the matter is determined on paper in chambers without a hearing the respondent should advise the Tribunal.

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Employment Judge: D Hoey
Date of Judgement: 01 December 2022
Entered in register: 05 December 2022
and copied to parties