



EMPLOYMENT TRIBUNALS

Claimant:
Mr M Kaffo

v

Respondent:
Heathrow Hotel Limited

Heard at: Reading and by
CVP

On: 21 and 22 July 2022 and
In private on 25 July 2022

Before: Employment Judge Hawksworth
Mrs J Hancock
Mrs I Sood

Appearances

For the Claimant: In person

For the Respondent: Mr S Mayberry (solicitor)

JUDGMENT ON RECONSIDERATION

The claimant's application for reconsideration of the reserved judgment of the tribunal sent to the parties on 1 August 2022 is refused under rule 72(1) of the Employment Tribunal Rules of Procedure 2013.

REASONS

Introduction

1. Reserved judgment and reasons in the claimant's claim against the respondent was sent to the parties on 1 August 2022.
2. On 13 August 2022 the claimant made an application for reconsideration of the judgment. I apologise for the delay in considering this application. Unfortunately, the application was overlooked by the tribunal administration and was not referred to me until 22 November 2022.
3. I have considered the application under rule 72(1).

The rules on reconsideration

4. 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.”

5. 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.

6. 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

7. The claimant’s application for reconsideration was made within the required 14 days of the date on which the reserved judgment and reasons was sent to the parties. The claimant complied with rule 71 in respect of the reserved judgment.
8. Rule 72(1) requires me to consider whether there is any reasonable prospect of the original decision being varied or revoked. I need to decide whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice. I have considered the claimant’s application with this test in mind.
9. The claimant’s application itself is 20 pages long. It has 25 exhibits attached: in total the application is 101 pages long. It is not easy to follow. I explain below my conclusions on the issues raised by the claimant in his application as I understand them. For reasons of proportionality, I explain here my reasons what appear to be key points. I do not refer to every point made by the claimant, but I have considered his application in full.
10. As I explain below, I have concluded that the application for reconsideration does not raise any error of law, any procedural error or any other matter which would make reconsideration necessary in the interests of justice.
11. The claimant says that the hearing time was reduced from three days to two days. For judicial resourcing reasons it was not possible for the hearing to start on 20 July 2022 as originally listed. However, it was still possible to have a fair hearing in the remaining time. The hearing proceeded on 21 and 22 July 2022. All the evidence and the parties’ closing comments (submissions) were heard in those two days. It is very likely that if the original three days had been available, the third day would have been a deliberation day for the tribunal. There was therefore no overall reduction in the time available for evidence and closing comments. As it was, a third day for tribunal deliberation took place very shortly afterwards, on 25 July 2022.
12. The claimant says that the tribunal ignored his request to postpone the hearing which he sent in an email at 14.32 on 20 July 2022. The application was made because of the claimant’s concerns about the arrangements for dealing with documents in a hybrid hearing. There was no difficulty with documents at the hearing. The claimant attended the

hearing in person. Documents provided by email during the course of the hearing were printed for the claimant by the tribunal administration. The claimant did not renew his application for postponement at the start of the hearing.

13. The reconsideration application also refers to delays in complying with the case management orders. The respondent's solicitor completed a pre-hearing check-list on 29 June 2022. They confirmed that witness statements had been exchanged by that date, but there had been delays in finalising the bundle because the claimant had provided additional documents on 28 June 2022. By the start of the hearing before us, there was an agreed bundle of 416 pages. These issues were discussed at the start of the hearing. Despite some delays with the preparations, the steps which had been taken meant that the case could go ahead.
14. At the hearing, the claimant asked to add pages to the bundle. This request was not ignored, as the claimant says in his application. The tribunal directed that the parties should, during the tribunal's reading time on the first day, cooperate to consider whether the claimant's additional pages were already included in the bundle. They did so and identified that most of the claimant's additional documents were already in the bundle, except for some copies of correspondence from the tribunal. Those additional pages were included by consent (although they were not relevant to the issues we had to decide).
15. The claimant says that the respondent dictated the order of witnesses. The tribunal had a detailed discussion with the parties at the start of the hearing about the order of witnesses. There were some issues with availability of the respondent's witnesses, caused by the reduced hearing time. The tribunal discussed possible approaches with the parties, explaining the procedure for evidence and submissions. The claimant said he was happy for the tribunal to decide the order of witnesses. We decided that because of the availability issues, we would hear from the respondent's witnesses on the first day, and the claimant on the second day.
16. The claimant says that the tribunal has been misled by the respondent and that documents have been manufactured by them. He makes other factual assertions challenging the tribunal's findings of facts or the conclusions reached by the tribunal. At the hearing, the tribunal heard and weighed up the evidence, considered submissions by the parties, made findings of fact on the balance of probabilities, applied the law and reached conclusions. The tribunal's findings of fact and conclusions were explained in detail in the reserved judgment and reasons. None of the claimant's assertions about the evidence or about the tribunal's conclusions provide a basis for reconsideration of the judgment.

17. The claimant says that the tribunal failed to consider the question of who is the correct respondent, or the identity of his employer. The tribunal dealt with this at paragraphs 72 to 75 of the reasons.

Summary

18. There must be some basis for reconsideration; the process is not an opportunity for a party to provide further evidence or to seek to reopen matters which the tribunal has determined.
19. I have carefully considered the claimant's application and, for the reasons set out above, I have concluded that there is no reasonable prospect of variation or revocation of the original decision. The application for reconsideration does not raise any error of law, any procedural error or any other matter which would make reconsideration necessary in the interests of justice.
20. The claimant's application for reconsideration is therefore refused under rule 72(1).

Employment Judge Hawksworth

Date: 9 December 2022

Reasons sent to the parties on

13 December 2022

For the Tribunal office