



EMPLOYMENT TRIBUNALS

Claimant:
Mr W Donaghue

Respondent:
v Steamin' Billy (Oadby) Limited

JUDGMENT

In exercise of powers contained in Rule 72 of the Employment Tribunals Rules of Procedure 2013 (“**Rules**”), the claimant’s application of 14 December 2022 for reconsideration of the judgment sent to the parties on dated 9 August 2022 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The claimant’s claims were dismissed following a two day preliminary hearing where I found that he was not employed by the respondent because (1) he had not been employed by his wife; and (2) even if he had, his employment would not have transferred to the respondent under TUPE in any case.

Applicable Rules

2. Rule 71 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. Unusually, I exercised discretion to extend this deadline on two occasions, with the final extension being until 4pm on 14 December 2022. The claimant’s application was received at 1pm on the day of the deadline, and so it is in time.
3. Rule 72 (1) of the Rules provides:

“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. ...”

4. Where an Employment Judge refuses an application following the application of Rule 72(1), then it is not necessary to hear the application at a hearing. Rule 72(3) provides that the application for reconsideration should be considered in the first instance, where practicable, by the same Employment Judge who made the original decision. I am the judge who made the decision in respect of which the claimant makes his application for reconsideration.

Grounds and reasons of reconsideration application

5. The claimant has provided a paragraph by paragraph summary outlining why he disagrees with the comments made and conclusions drawn by my judgment. The claimant's overarching complaint seems to be a perception of bias towards the respondent in the way that the hearing was handled and how the evidence was considered when reaching a decision. Within that complaint, he disagrees with all points that are perceived as running against his case and asserts the arguments which his representative made on his behalf at the hearing on 8 and 9 August 2022. The claimant reaffirms the argument, made at the hearing, that HMRC considered that he was an employee of his wife and the argument is presented in a way that suggests this should trump other considerations. The claimant also makes comments about how I dealt with the case at a telephone preliminary hearing in June 2022, including that I found the case interesting and reserved the matter to myself going forward.

Decision on the reconsideration application

6. The hearing was the claimant's opportunity to give information, ask questions and raise issues, which he did, through his representative. Through his representation, the claimant had the opportunity to ask questions of all witnesses and advance all relevant arguments. I consider that his representative was not fettered from running his arguments and presenting his case. Unfortunately, for the reasons outlined in my judgment, that case was not evidentially strong enough to make out the claimant's position that any liability could rest with the respondent. Crucial evidence was not presented which, if it exists, may have assisted in that regard. In the absence of such evidence or arguments, the conclusions I have drawn were an inevitable result.
7. I conducted a closed telephone case management discussion on 1 June 2022. It is not the function of such a hearing to make a decision or make comments about the strength or weakness of one side's case, or the other. That is done at an open preliminary hearing, which was listed subsequently. The employment tribunal cannot end a claim at a closed preliminary hearing and so the fact that I listed another hearing is not an indication that I thought the claimant had a good case. I said that I would sit on that hearing because it was clear to me that there was a heated on-going dispute between the parties about disclosure, which might require close attention, and it made sense for the judge who had heard from the parties and gained that background understanding to deal with any such issues going forward.
8. The Tribunal gave all the issues full consideration and prepared its decision and reasons in detail. The claimant seeks to challenge findings of fact that were made

or the conclusions that the Tribunal reached from those findings. The application is an attempt to re-litigate what was explored in detail at the hearing. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can adequately explain why the matter was not raised before. The claimant's application does not identify any new matters.

9. It is not the purpose of reconsideration to allow a party to dispute a determination that a party disagrees with and it is a fundamental requirement of litigation that there is certainty and finality. If conclusions made are disputed with regard to whether a correct interpretation of the law was made, they are matters for an appeal which the claimant is able to make to the Employment Appeal Tribunal. These are not matters for a reconsideration request.
10. I do not doubt that the claimant is unhappy with the judgment but, for all of the reasons outlined here, the claimant's application for reconsideration of the judgment in his case is refused.

Employment Judge Fredericks

15 December 2022