



EMPLOYMENT TRIBUNALS

Claimant: Miss K Glowienko

Respondent: BLP Pufi Ltd

JUDGMENT

The Judgment of the Employment Tribunal is that it cannot be said that there is no reasonable prospect of the judgment of 15 March 2021 and the reconsideration judgment of 12 April 2021 being varied or revoked. The case shall be listed for a reconsideration hearing.

REASONS

1. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative 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 judgment may be confirmed, varied or revoked.
2. Any application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record was sent to the parties.
3. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

4. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations. The obligation includes:
 - *Ensuring that the parties are on an equal footing.*
 - *Dealing with cases in ways which are proportionate to the complexity and importance of the issues.*
 - *Avoiding unnecessary formality and seeking flexibility in the proceedings.*
 - *Avoiding delay, so far as compatible with proper consideration of the issues.*
 - *Saving expense.*
5. The procedure upon a reconsideration application is for the Employment Judge that heard the case or gave the judgment in question to consider the application and determine if there are no reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there are no reasonable prospects of reconsideration in the interest of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
6. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application is to act as a filter to determine whether there is no reasonable prospect of the judgment being varied or revoked were the matter to be considered at a reconsideration hearing.
7. Rule 70 says that the Tribunal may reconsider a judgment upon its own initiative where it is in the interests of justice to do so. If the Tribunal is considering doing so then the Tribunal must inform the parties of the reasons why the decision is to be reconsidered. (Notice was sent to the parties to this effect on 20 April 2021 to which there has been no response).
8. In this case, I issued a judgment on 15 March 2021 (*the Judgment*). In the Judgment, I struck out the claimant's claim upon the basis that the claimant had failed to comply with a deposit order (*the deposit order*) made by Employment Judge Wade on 21 January 2021 at a hearing held on that day. The deposit order was sent on 25 January 2021. The claimant was ordered to pay a deposit as a condition of being permitted to pursue her three claims. The amount of the deposit ordered to be paid was in the sum of £100 for each allegation.
9. In an email dated 16 March 2021, the claimant's solicitor applied for reconsideration of the Judgment upon the basis that the deposit order was not received by email or by post.

10. The reconsideration application was refused by me in a reconsideration judgment (*the Reconsideration Judgment*) that was sent to the parties on 7 April 2021. I held that the deposit order was sent to the claimant's solicitor by email. I held that the email address to which it was sent was matthew@optimalsolicitors.com. This is the email address supplied by the claimant's solicitor when he submitted the claim form and went on the record as acting for the claimant and is the email address used by him when he made his reconsideration application upon 16 March 2021.
11. I observed that the reconsideration application was made within the prescribed time limit. However, it was not properly instituted as it appears not to have been copied to the respondent.
12. That notwithstanding, I felt able to deal with the application without the respondent's input. The issue was whether the application enjoyed no reasonable prospects of the Judgment being varied or revoked.
13. I recorded that the claimant's solicitor attended the hearing on 21 January 2021. He joined the hearing, which had been listed to commence at 2:00pm, at 2:30pm. Therefore, he knew that the claimant had been ordered to pay a deposit. When he joined the hearing, Employment Judge Wade told him that she had made the deposit order on the papers.
14. An email confirming that the deposit order had been made was sent by the Employment Tribunal's administration to the claimant's solicitor at the email address referred to in paragraph 10. It was sent on 25 January 2021 at 09:02.
15. I was satisfied that it was properly served. As far as I was aware when I promulgated the Reconsideration Judgment, there was no record of the deposit order not having been received by the claimant's solicitor. This was sufficient to dispose of the reconsideration application. I held that there was no reasonable prospect of the Judgment being varied or revoked. The deposit order was made on 21 January 2021. It was served on 25 January 2021. The claimant failed to comply with it. It was not in the interests of justice to reconsider the judgment in the circumstances.
16. However, shortly after I promulgated the Reconsideration Judgment, it was brought to my attention by one of the Tribunal clerks that the email address held by the Tribunal for the claimant's solicitor was incorrect. *Matthew* had been spelt as *Mathew* in the email address. The email serving the deposit order had bounced back upon the Tribunal's server. It is unfortunate that the clerks had not picked this up at the time. Similarly, the Reconsideration Judgment had bounced back. It was at that point that it was discovered that the email address was incorrect and that the deposit order had not reached the claimant's solicitor.
17. The parties were notified of the position in paragraph 15 by letter dated 20 April 2021. The respondent was asked for comment by 4 May 2021 but has failed to do so. Perhaps surprisingly, the claimant's solicitor did not make a repeat application for reconsideration.
18. The claimant's solicitor was of course aware that the deposit order had been made. Employment Judge Wade told him so on 21 January 2021. No action was taken by the claimant's solicitor after 21 January 2021 to enquire as to the

whereabouts of the deposit order. He knew or ought to have known during January and February 2021 that the claimant was required to pay a deposit and that a failure so to do would result in the striking out of the claim. Yet he appears to have taken no steps to ascertain the whereabouts of the deposit order or otherwise protect the claimant's position.

19. However, the position is that Rule 39(3) of the Tribunal's rules requires the paying party to be provided with the order and be notified about the potential consequences of the deposit order. This has not been done.
20. Therefore, it now cannot be said that the reconsideration application of 16 March 2021 has no reasonable prospect of succeeding. Further, upon the Tribunal's own initiative, it cannot be said that there is no reasonable prospect of the Reconsideration Judgment of 12 April 2021 being varied or revoked in the circumstances.

Employment Judge Brain

Date 28 May 2021

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