



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Ekeanyanwu

**Respondent:** Cordant Security Ltd

## DECISION

The claimant's application dated 10 February 2022 for reconsideration of the judgment sent to the parties on 27 January 2022 is refused.

## REASONS

1. By email presented to the tribunal on 10 February 2022, the claimant applied for reconsideration of the judgment sent to the parties on 27 January 2022.
2. A 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.
3. Under Rule 72(1) of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked.

### Background

4. By letter dated 29 June 2021, the tribunal gave the claimant an opportunity to make representations or to request a hearing as to why his complaint of unfair dismissal should not be struck out, because it appeared that the claimant was employed for less than two years and, if this was so, the tribunal could not consider the claimant's complaint that he was unfairly dismissed. No response was received by the tribunal from the claimant.
5. On 26 January 2022, I issued a judgment striking out the complaint of unfair dismissal. The claimant's claim also contained a complaint of unlawful deduction from wages, which had been listed for hearing on 1

February 2022 (and which was duly heard by another judge on that date). Although I signed the judgment striking out the unfair dismissal complaint on 26 January 2022, that judgment was sent to the parties on 27 January 2022.

6. However, in an email at 16.27 on 26 January 2022, the claimant wrote to the tribunal (not copied to the respondent) stating *"Dear Judge Baty, this is to bring to your knowledge that prior to receiving email this afternoon (26/1/20 22 by 14:31 pm) I have not been informed before today to respond to the striking out warning. Please find attached the grounds for my resistance from striking out my unfair dismissal."*
7. As the judgment was not sent until the following day (27 January 2022), it is not clear in response to what communication from the tribunal that email of 26 January 2022 was sent by the claimant. However, in the light of the upcoming hearing on 1 February 2022, it is possible that the tribunal on my instruction chased the claimant for a response to the tribunal's original strike out warning of 29 June 2021. In any event, that the claimant's email of 26 January 2022 was not referred to me at the time and indeed it has only just been referred to me now.
8. In the attachment to that email, the claimant set out what he described as his *"Grounds for the resistance of the striking out my unfair dismissal"*. In it, whilst the claimant repeated that he considered that that was the first time that the tribunal had written to him about the striking out of his unfair dismissal complaint, he acknowledged that the respondent's counsel had sent an email relating to that to him sometime in October 2021. He was, therefore, on notice of the strike out warning at that time but did not write to the tribunal at that time.
9. In any event, whilst the attachment to the claimant's email of 26 January 2022 makes reference to an alleged procedural point in relation to his dismissal, it discloses no grounds at all as to why the unfair dismissal complaint could be heard in the absence of the claimant having two years' continuous employment. Indeed, it did not address the issue of the fact that the claimant did not have two years continuous employment (a fact which he subsequently admitted in his subsequent reconsideration application of 10 February 2022).
10. Therefore, even if I had been in possession of the claimant's email of 26 January 2022 at the time when I made my decision on strike out, I would still have struck out his unfair dismissal complaint on the basis that he did not have two years' continuous employment and the tribunal did not therefore have jurisdiction to hear it.
11. By email of 10 February 2022 at 08:17 (not copied to the respondent), the claimant stated *"Dear Judge Baty, I writing to request a reconsideration/hearing in the above subject for the interest of justice. Though my employment at the time of the purported termination was not up to 2 years. Please find attached document as my grounds for the request."* That email was, therefore, sent on the last day of the 14 day time limit for presenting applications for reconsideration (the judgment having been sent to the parties on 27 January 2022) and it was therefore

presented in time. Sadly, that email was also not referred to me at the time and has only just been referred to me now.

12. In his attached grounds for reconsideration, the claimant states that his case is exceptional as it was “*automatically unfair and discriminatory*”. He gives no details as to why his dismissal was discriminatory and does not state a protected characteristic on which he relies as the reason for any discriminatory treatment. Similarly, he does not state why he considers that his dismissal was automatically unfair such that the tribunal has jurisdiction to hear his unfair dismissal complaint regardless of his length of continuous employment. There is a lengthy paragraph of narrative which contains a number of generalised allegations. It is possible to discern a reference to the claimant reminding his operations manager that his contract of employment is outstanding. It is also possible to discern a number of allegations that he was threatened with disciplinary action for a number of reasons or for no reason. At the end, there is a statement that the respondent had not given him his contract of employment and had not fulfilled its obligation under employment law in not issuing a contract of employment. However, there is no statement as to the reason why the claimant maintains that he was dismissed and certainly no suggestion that it was a reason which would mean that the two-year continuous employment requirement did not apply to his complaint. It would therefore take a significant degree of construction to convert this to a pleaded case that the claimant was dismissed by the respondent for one of the “automatically unfair” reasons set out in the Employment Rights Act 1996, such that the two-year continuous employment requirement did not apply.

#### My decision

13. I do not consider that there is any reasonable prospect of the original decision being varied or revoked, for the following reasons.
14. First of all, the claimant was aware in October 2021 that the tribunal was considering striking out his complaint because, even if he did not receive the tribunal’s letter of 29 June 2021 himself (and I make no finding as to whether or not he did, especially as the respondent clearly received it), he was made aware of it by the respondent in October 2021, several months before the decision to strike out the claim was actually taken. The claimant did not do anything at that point. Furthermore, when he did eventually respond, on 26 January 2022, there was nothing in his application which indicated that the tribunal would have jurisdiction to hear his unfair dismissal complaint and therefore the decision to strike it out, sent to the parties on 27 January 2022, was correct.
15. As to the reconsideration application, the claimant could have set out those details prior to the decision to strike out his complaint, either in October 2021 or indeed in his email of 26 January 2021. However, he did not. It would not be in the interests of justice, given the opportunities that he had to do this, and given that he could have put this information forward at that time, to overturn the decision on the basis of him then supplying this information after the decision had been made. For that reason, there is no reasonable prospect of my original decision being varied or revoked.

16. Secondly, in any event, as set out above, the details in the reconsideration application do not in themselves demonstrate grounds as to why the unfair dismissal complaint, taken at its highest, would not require the claimant have two years' continuous employment. There would need to be further information from the claimant, almost certainly case management in order to work out what his pleaded case was, and an amendment would need to be allowed in circumstances where the amended case, even back on 10 February 2022, was substantially out of time; in other words, there would need to be a considerable amount of extra work even to establish whether the claimant had a justiciable case, let alone one which should be allowed to proceed on amendment. For that reason too, there is no reasonable prospect of the original decision being varied or revoked.
17. The application for reconsideration is therefore refused.

Employment Judge Baty

Date: 09/12/2022

SENT TO THE PARTIES ON

.12/12//2022

FOR THE TRIBUNAL OFFICE