



EMPLOYMENT TRIBUNALS

Claimant: Mr J Sinnott

Respondent: Urbanbubble Liverpool Limited (In Creditors' Voluntary Liquidation)

JUDGMENT

1. The Tribunal waives the requirement to copy the claimant's application for a reconsideration to the respondent.
2. The claimant's application dated **23 September 2022** for reconsideration of the judgment sent to the parties on **22 September 2022** is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. By an email dated 23 September 2022 the claimant raised a complaint against the judgment in this case sent to the parties in writing on 22 September 2022 ("the Judgment"). His email was referred to Regional Employment Judge Franey. On 11 October 2022 he directed that it be referred to me and treated as an application for reconsideration of the Judgment. In these reasons I refer to that email of 25 September as "the Application".
2. I considered the Application in chambers on 3 January 2023.
3. The Judgment was made under Rule 21 of the Employment Tribunal Rules 2013 ("the ET Rules"). I had struck out the respondent's response to the claim because the respondent's liquidator had confirmed that that response was not being actively pursued.
4. In the Judgment I upheld the claimant's complaints of automatically unfair dismissal under s.103 of the Employment Rights Act 1996; for failure to pay

accrued but untaken holiday pay; and of breach of contract/failure to pay notice pay. I awarded total compensation of £7674.80. That reflected my decision not to award post-dismissal compensation for loss of earnings because the claimant's employment would have ended in any event when the respondent's management agency agreements relating Wolstenholme Place came to an end and that the claimant had not shown that there was any prospect that there was a role for him at Falkener Place.

Relevant Law

5. An employment tribunal has a power to reconsider a judgment "where it is necessary in the interests of justice". On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the ET Rules).
6. An application for reconsideration shall be presented within 14 days of the date on which the judgment was sent to the parties or within 14 days of the date that written reasons were sent (if later). It must be copied to the other party (rule 71 of the ET Rules).
7. Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the judge considers there is no reasonable prospect of the original decision being varied or revoked (rule 72(1) of the ET Rules). If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing (rule 72(2) of the ET Rules).
8. The "interests of justice" allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also to 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 (**Outsight VB Ltd v Brown [2015] ICR D11, EAT para 33**).
9. Achieving finality in litigation is part of a fair and just adjudication. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714**. It has also been the subject of comment from the then President of the Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** (paragraph 34) in the following terms:

"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."

10. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All ER 745, CA** will, in most cases, encapsulate what is meant by the “interests of justice”. That means that in most cases, in order to justify the reception of fresh evidence, it is necessary to show:
- that the evidence could not have been obtained with reasonable diligence for use at the original hearing
 - that the evidence is relevant and would probably have had an important influence on the hearing; and
 - that the evidence is apparently credible.
11. The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met. (**Outsight** at paras 49-50).

The claimant’s reconsideration application

Procedural points

12. The Application was made within 14 days of the parties being sent the Judgment. It was made in time. However, it was not copied to the respondent as required by rule 71 of the ET Rules. At the rule 72(1) preliminary stage the Tribunal should not seek any response to the application from the respondent (**TW White and Sons Ltd v White EAT 0022/21**). Given that, and the fact that the respondent is not taking an active part in these proceedings because of its liquidation, I consider it just to waive the requirement for the application to be copied to the respondent.

The substance of the claimant’s application

13. The background to the Judgment was my reserved judgment sent to the parties on 22 February 2022 in which I decided that the claimant’s employment (and the employment of those claimants whose cases were joined with his) did not transfer under TUPE to other respondents since dismissed from these proceedings. That meant that the claimant’s claim was against the respondent only.
14. On 1 July 2022 the Tribunal wrote to all the claimants in the joined cases against the respondent to confirm that Judgment could be given under Rule 21 of the ET Rules without a hearing. The Tribunal indicated that since the position appeared to be that the claimants’ jobs disappeared on 20 February 2020, any compensation for loss of earnings after dismissal would be zero. The claimants were given the opportunity to provide updated schedules of loss and to set out in particular reasons why compensation should be awarded for loss of earnings after dismissal. They were asked to confirm whether they were happy for the compensation to be decided without a further hearing. The claimant confirmed he was happy for compensation to be decided without a hearing.
15. The claimant’s email of 23 September 2022 sets out 5 numbered points. I understand those to make 4 arguments for reconsideration. The first is that I was aware that the respondent was in liquidation and should have taken that

into consideration in reaching my decisions in the case. The second is that the directors of the respondent, Mr and Mrs Howard, are also directors of other Urban Bubble Ltd companies and that I could have given judgment against Urban Bubble if I found the respondent to be at fault. Clearly, the respondent being in liquidation impacts on the claimant's ability to recover amounts awarded in the Judgment. However, by law, the judgment must be against the claimant's employer. The fact that there are other companies with the same directors run from the same address does not allow me to give judgment against any of those other companies where I have found the respondent was the claimant's employer. Those points do not provide grounds for reconsidering the Judgment.

16. The third point made is that the claimant was employed by Urban Bubble Ltd not the respondent. Any argument that his employer was Urban Bubble Ltd rather than the respondent should have been made in relation to the judgment of 22 February 2022. In any event, the claimant's contract of employment which is at p.260 of the bundle of documents for the preliminary hearing in this case names his employer as Urban Bubble (Liverpool), i.e. the respondent.
17. The fourth point is the suggestion that Urban Bubble Ltd has similar roles for the claimant at Liverpool or Manchester but did not give the claimant the opportunity to apply for those roles and/or that Urban Bubble Ltd took over management of other buildings in the respondent's portfolio. The claimant has not provided evidence of what those roles are or what properties Urban Bubble Ltd took over. In any event, as the argument appears to be that there was a TUPE transfer from the respondent to Urban Bubble Ltd and the claimant should have been taken on by that company, that is a claim that would need to be brought against that company not the respondent. It does not provide a ground for reconsidering the judgment against the respondent.
18. The final point made in bullet point 5 is that the respondent did not turn up for hearings, showing no respect for the Tribunal or its former employees. That does not provide a ground for varying the Judgment.
19. Stepping back and taking all the points made by the claimant together, I find there is no reasonable prospect of the claimant's application for reconsideration leading to the Judgment being varied or revoked and I refuse it under rule 72(1) of the ET Rules.

Employment Judge McDonald
Date ___30 January 2023

Case No: 2406175/2020

JUDGMENT SENT TO THE PARTIES ON

31 January 2023

FOR THE TRIBUNAL OFFICE