



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4103161/2022

Hearing held at Dundee on written application on 20 January 2023

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Employment Judge A Kemp

Mr Albert Iannetta

**Claimant
Represented by:
Mr J Lawson,
Solicitor**

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ATMRC Ltd

**Respondent
Represented by:
Mr T Muirhead,
Consultant**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The application for reconsideration made by the claimant is refused.

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REASONS

Introduction

1. A Judgment was issued in this case on 5 January 2023 (“the Judgment”)
2. The claimant has applied for reconsideration of the Judgment by email dated 18 January 2023.

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The Law

3. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 set out the Rules of Procedure in Schedule 1, and those ETZ4(WR)

in relation to the reconsideration of judgments are at Rules 70 – 73. The provisions I consider relevant for the present application are as follows:

“70 Principles

5 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.

10 **71 Application**

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72 Process

20 (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.

30 (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.”

4. The discretion in the Rules is to be exercised having regard to the overriding objective in Rule 2. It states as follows:

“2 Overriding objective

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules.

The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

5. In *Serco Ltd v Wells [2016] ICR 768*, the EAT observed that the Rules of Procedure must be taken to have been drafted in accordance with the

principles of finality, certainty and the integrity of judicial orders and decisions.

6. In *Liddington v 2Gether NHS Trust EAT/0002/16* the extent to which reconsideration was appropriate was addressed by the EAT which stated that “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 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.”

15 Discussion

7. I consider that there is no reasonable prospect of the original decision being varied or revoked. The arguments made in the application essentially repeat those made at the Final Hearing, which were all considered by the Tribunal and rejected for the reasons set out in the Judgment. Where what are alleged to be errors of law are made the recourse is to seek to appeal to the Employment Appeal Tribunal.
8. The application for reconsideration is accordingly refused.

25 **Employment Judge:** A Kemp
Date of Judgment: 25th January 2023
Date sent to parties: 25th January 2023