



EMPLOYMENT TRIBUNALS

Claimant: Mr J Rostance

Respondents: (1) The Secretary of State for Business, Energy and Industrial Strategy
(2) Wow Video Production Ltd (in liquidation)

Heard at: Bristol (via vhs) **On:** 16.02.2023

Before: Employment Judge David Hughes

Representation

Claimant: In person

Respondent: (1) Mr Soni, lay representative
(2) No appearance and not represented.

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Claimant has applied for a reconsideration of the Tribunal's judgment dated 17.02.2023. The grounds are set out in his email dated 19.02.2023, received at the Tribunal office on that same date.

The Rules

2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for

- reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was received before the decision was sent out, and therefore was received within the relevant time limit.
3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
 4. Rule 71(1) provides that an Employment Judge considering an application for reconsideration shall refuse the application if the Judge considers that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the Tribunal is to notify the parties, setting a time limit for any response to the application, and seeking the parties' views on whether it can be determined without a hearing.
 5. In considering this application, I am mindful of the guidance provided by the Employment Appeal Tribunal in Outasight VB Ltd -v- Brown¹. In that case, the EAT expressly referred to the position where a party has not had a fair hearing². It also referred to Newcastle upon Tyne City Council -v- Marsden³, in which the EAT (considering earlier rules) referred to the importance of finality in litigation: it is in the interests of justice that a successful party should be entitled to regard a Tribunal's decision on a substantive issue as final (subject, of course, to appeal). I read that latter observation as being subject to the Tribunal's decision being one that it has reached after a fair hearing.

The Claimant's grounds

6. The grounds relied upon by the claimant are these: that, during the hearing (which took place via the video hearing system), the 1st Respondent's representative continually left the hearing due to connection issues. Whenever he left, the hearing had to be paused. The Claimant was representing himself, and says he was "*incredibly nervous*". He says that the constant interruptions threw him off so badly that he wasn't able to have a fair hearing or present his case anywhere near as he would have liked. He says that one interruption lasted for 20 minutes, and believes there were a total of 30 to 40 interruptions. He estimates that, in his closing statement, he was interrupted around 12 times, and says that he didn't recover from that. He says it was "*a mess*". He says that he raised the issue of having been distracted throughout, including in his closing statement, but that the Tribunal dismissed this.

Decision

¹ UKEAT/253/14 [2015] I.C.R. D11

² @ para 38.

³ UKEAT/393/09 [2010] I.C.R. 743

7. It is true that Mr Soni, for the 1st Respondent, experienced considerable difficulties with his connection on the day of the hearing. It is true that he repeatedly lost connection, and that this caused a significant number of interruptions in the course of the hearing. This, no doubt, caused the Claimant frustration. Although I accept that the Claimant probably was nervous, some degree of nerves are likely in a person representing himself before the Tribunal. The Claimant did not appear to be nervous, although I accept that demeanour may be a poor guide to this.
8. That said, any nerves from which he was suffering did not prevent the Claimant from presenting his arguments. He did so articulately. Although the interruptions caused some frustration, at no point did the Claimant question the fairness of the hearing. Although he expressed the view that he would probably think of other things he wanted to say after the hearing, that sentiment is one common to professional advocates. What seems to me to be important are two things:
 - (a) That the Claimant had the opportunity to say anything he wanted to say, and;
 - (b) That he has not identified anything new that he would like to say, that might cause the original decision to be varied or revoked.
9. The connectivity difficulties that Mr Soni experienced did not cause me to put any time limit on the Claimant, either in his evidence or in his submissions, and he had as much time as he needed to say what he wanted to say.
10. Accordingly I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Hughes
Date: 03 March 2023

Judgment sent to the Parties: 03 March 2023

FOR THE TRIBUNAL OFFICE