



EMPLOYMENT TRIBUNALS

Claimant: Mr O Farah
Respondents: Expert Logistics Ltd
Heard at: Bristol (decision on papers in Chambers)
Before: Employment Judge Midgley

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application for reconsideration is refused because it was made outside the time limit and in the alternative there is no reasonable prospect of the claimant demonstrating that it is in the interests of justice for the Judgment to be varied or revoked.

REASONS

The application

1. By a letter received on 9 February 2023 the claimant applied for reconsideration of the Judgment dated 5 September 2002 which was sent to the parties on 13 September 2022 ("the Judgment") by which the claims were struck out pursuant to rule 47 and/or 37 following the claimant's failure to attend a preliminary hearing on 5 September 2023 on the grounds that (a) the claimant had failed to attend the hearing, and/or (b) he was not actively pursuing the claim or (c) that he had failed to comply with case management orders. The grounds of the application are contained to an email of the same date.

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 therefore received outside the statutory time limit.

Grounds of the application

3. The claimant’s grounds for reconsideration appear to be as follows:
 - a. He argues that he wrote to the Tribunal on 30 August 2022 stating that he could not attend the hearing due to poor health; and
 - b. He only received the Judgment on 19 January 2023 (which appears to be a point made in relation to the lateness of his application).

Background

4. The essential factual background is as follows:
 - a. First, the claim was presented in November 2019 complaining about events that occurred in June to November 2019;
 - b. Following a case management hearing on 8 July 2020, the claim was listed for a four-day final hearing between 7 and 10 March 2022;
 - c. On 29 November 2021 the respondent’s representatives applied for an unless Order because of the claimant’s failure to comply with any of the case management orders made on 8 July 2020;
 - d. The final hearing was postponed because of the claimant’s application in January 2022 as he wished to instruct new representatives,
 - e. On 28 February 2022 the final hearing was relisted for 5-8 September 2022 and notice was sent to the parties,
 - f. The final hearing was vacated and converted to an urgent case management hearing because the claimant had failed to comply with case management orders to prepare for it; and
 - g. Lastly, since the date of the claimant’s application in January 2022 the claimant had failed to comply with any of the case management orders and had not directly or through his representatives corresponded with the respondent to that end.

Conclusions

5. We address each argument in turn.

The claimant's letter of 30 August 2022

6. The letter was not received by the Tribunal until 6th September 2023. I will take the claimant's case at its highest and accept the unspoken premise that he posted it on the day that the letter is dated. The letter requests that the hearing should be postponed because the claimant was suffering from 'poor health' although it does not identify why that is the case or the extent of the impairment caused by the ill health. The claimant suggests that he will send medical evidence to confirm that 'in due course.'
7. First, whilst the letter if received would indicate that the claimant still wished to pursue his claim and raised the prospect that the claimant was too unwell to participate in the hearing, the letter represented a bland assertion of ill health; it provided no details and no evidence to support the proposition. It certainly did not explain why the claimant could not participate in a telephone hearing or to ask someone to do so on his behalf.
8. In the circumstances of the case, had the letter been received before the hearing I would have refused the application to adjourn the hearing and would have required the claimant to attend by telephone or to instruct someone to do so on his behalf to explain what had been done to ensure compliance with the case management orders.
9. Secondly, the letter does not explain why the claimant had failed to comply with case management orders or to respond to correspondence in that regard from the respondent. The claimant sent no further correspondence addressing the respondent's arguments about his failure to comply with Orders which were carefully set out in the respondent's application of 31 August 2022 (which was sent to claimant by email).
10. The claimant made no effort to contact the respondent or the Tribunal or the respondent to ensure that the letter was received or to raise the matters within it directly before or on the morning of the hearing.
11. This ground of the application therefore entreats us to reconsider and review our decision on matters of fact or arguments which we have previously determined. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful, he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require

a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order”.

12. There was no denial of natural justice in this case; rather I considered the evidence and concluded that the claimant had failed to comply with case management orders and had failed to attend the hearing. Both were conclusions open to me on the evidence before me.
13. The claimant therefore has no reasonable prospect of showing that it would in the interests of justice to vary or revoke the Judgment on the basis that he had sent a letter which failed to address the substantive issues for which caused the case to be struck out and which was not received until after the hearing in question.

Limitation

14. The claimant’s application is made significantly outside the time limit in Rule 72. It appears that the claimant argues that the cause of that failure was because he did not receive the judgment until January 2019. Given the address on the letter of 30 August 2022, it appears that the claimant moved from the address on the Tribunal record (19 Backfields Court, Bristol) to Flat 1, 54 Alexandria Road, Newport. The claimant did not notify the Tribunal or the respondent of his change of address, nor did he cause his representatives to do so.
15. He was copied into the respondent’s email which contained the application for strike. He knew of the date of the final hearing. He made no effort to contact the Tribunal or the respondent between 5 September 2021 and 1 February 2023 to ascertain what had happened to his case. There would be no basis therefore to extend time to permit the application for reconsideration to be accepted out of time.
16. Accordingly, I dismiss the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the claimant demonstrating that it is in the interest of justice for the Judgment to be varied or revoked.

Employment Judge Midgley
Date: 24 March 2023

Judgment sent to the Parties: 24 March 2023

FOR THE TRIBUNAL OFFICE