



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Sayeed

**Respondent:** Department of Work and Pensions

## JUDGMENT ON RECONSIDERATION

**Rules 70-73 of the Employment Tribunal Rules of Procedure 2013**

The claimant's email of 23 February 2023 for reconsideration of the judgment in this case is refused.

## REASONS

1. By email presented to the tribunal on 23 February 2023, the claimant applied for reconsideration of the decision following the hearing on 07 February 2023 and which was sent to the parties on 15 February 2023.
2. The history of these proceedings is set out in detail in the decision of 07 February 2023. I do not consider it necessary to repeat these in length here. However, in short:
  - I. The claimant's claim was dismissed following his non-compliance with two unless orders. These required the claimant to present documents that related to his non-attendance at a Preliminary Hearing that was listed to take place on 25 August 2021 and his non-attendance at a Preliminary Hearing that was to take place on 14 April 2022. His claim in its entirety was dismissed without further order following non-compliance on 15 June 2022.
  - II. The claimant made an application to set aside the dismissal of his claim pursuant to Rule 38(2) and requested a hearing for this to be determined.
  - III. This hearing was postponed on two occasions (initially listed for 01 November 2022 and then re-listed for 16 December 2023) and was eventually listed to be heard on 07 February 2023.
  - IV. The claimant was required to submit evidence to support his application.

The time to submit evidence was extended from the initial deadline to 03 February 2023.

- V. At no point before the hearing on 07 February 2023, nor before I considered his application for reconsideration today has the claimant submitted any evidence that would have been considered at the hearing on 07 February 2023. The claimant has not presented to the tribunal any evidence that supports the reason why he could not comply with the unless orders, nor has he presented the evidence that was initially required to comply with the unless orders in the first place. Nor has he supplied any other documentary evidence.
3. The claimant did not attend at the hearing of 07 February 2023. The tribunal made enquiries as to whether the claimant was intending on attending at the tribunal. The claimant answered the call that was made by the tribunal to him on the phone number that the tribunal had on record. The claimant explained to my clerk that he was not attending today as he was not aware of the hearing. On enquiry, the claimant also explained that he would not be able to attend the tribunal for a delayed start to proceedings, should that be granted. I was satisfied that the claimant was aware of the hearing. The hearing, considering the overriding objective and Rule 47 of the ET Rules of Procedure, proceeded in the claimant's absence. Full details are provided in the decision of 07 February 2023. The claimant's application under Rule 38(2) was held not to succeed.
4. The claimant's application for reconsideration of the 07 February 2023 decision is on two grounds:
  - i. That the response to his request for an extension of time to submit evidence was not responded to until very late, leaving him with little time to seek legal advice.
  - ii. That the claimant submitted that he needed wheel-chair help to which there was no reply, leaving him unsure as to the correct hearing date. The claimant also says that he explained to my clerk the circumstances and that he was awaiting a call back as he was willing to attend should his request been granted.
5. The position with respect reconsideration of judgments is contained within Rules 70-73 of the Employment Tribunal Rules of Procedure 2013. According to Rule 70, a Tribunal, either on its own initiative or on the application of a party, may reconsider any judgment 'where it is necessary in the interests of justice to do so'.
6. Under Rule 72 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. Where the application is not refused, the application may be considered at a hearing, or, if the judge considers it in the interests of justice, without a hearing. Where the latter course is the course to be adopted, the judge will give the parties a reasonable opportunity to make further written representations.
7. Simler P set out the approach to be taken by tribunals when considering an application for reconsideration in **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA**:
  - I. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable prospect of the original decision being varied or revoked

refusing the application without a hearing at a preliminary stage;

- II. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and
  - III. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.
8. Furthermore, Simler P, at paragraphs 34 and 35 of Liddington also explained the following:

*“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. Tribunals have a wide discretion whether or not to order reconsideration.*

*Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”*

9. I have carefully considered the matters that have been raised in the email of 23 February 2023. I have concluded that it is not in the interests of justice to reconsider the decision of 07 February 2023. I will deal with them in order of the two parts as they appear in his application.

First matter: the claimant had little time to comply with the varied date for presenting evidence

10. The claimant was given ample time to comply with the unless orders when they were first issued on 14 April 2022. The claimant was given until 05 May 2022 to provide the necessary information. These were not complied with, and no application was made at the time to vary the direction. And further, none of the information requested by the tribunal as part of the unless orders have ever been sent to the tribunal.
11. The claimant when he applied to set aside the dismissal of his case consequent to non-compliance with unless orders was then directed to provide information to support his application. This was required to be sent to the respondent and the tribunal by 09 December 2022. Such evidence would inevitably have had to include any evidence that would have satisfied the unless orders (as this would have to form part of the tribunal's consideration as to whether to set aside the dismissal, unless there was a good explanation as to why this was not possible), as well as evidence that supported why he says he could not comply with them within the relevant time period. None of this evidence has ever been provided to the tribunal. This is despite the initial deadline on 09 December 2022 to provide supporting evidence being varied until 03 February 2023.

Second matter: the claimant submitted that he needed wheel-chair assistance that

he was awaiting a call back form the tribunal as he was willing to attend should his request been granted

12. I have checked the tribunal file carefully. The claimant has never contacted the tribunal to indicate he needed wheel-chair assistance.
13. Further, on enquiry with the claimant following the claimant's non-attendance at the hearing of 07 February 2023, the claimant explained to my clerk that he was not aware of the hearing (which I found to be implausible) and that he was not willing to attend if the hearing had a delayed start. Put simply, the claimant brings his second part of his application on matters that simply did not happen.
14. Given the above, there is therefore no reasonable prospect of the original decision being varied or revoked. The two reasons on which the claimant relies on in making his application are not made out, and do not support variation or revocation.
15. The application for reconsideration is therefore refused.
16. For the avoidance of doubt, this brings the Employment Tribunal's involvement in this case to an end.

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Employment Judge Mark Butler

Date 23 March 2023

JUDGMENT SENT TO THE PARTIES ON

29 March 2023

FOR THE TRIBUNAL OFFICE

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