



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M M Vellathur

**Respondent:** Global Facility Management Ltd

## RECONSIDERATION JUDGMENT

The respondent's application dated 23 February 2023 for reconsideration of the judgment sent to the parties on 22 December 2022, is refused.

### REASONS

1. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).
2. Rule 71 provides that an application for reconsideration shall be presented in writing within 14 days of the date on which the written record was sent to the parties.
3. Rules 86 and 90 address delivery to parties. Where a document is delivered to a party by post, unless the contrary is proved, it is taken as having been received on the day on which it would be delivered in the ordinary course of post.
4. The Court of Appeal in **Ministry of Justice v Burton [2016] EWCA Civ 714** has emphasised the importance of finality, which militates against the discretion being exercised too readily. In exercising the discretion, I must have 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.
5. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

6. Preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes, so far as practicable, saving expense. Achieving finality in litigation is part of a fair and just adjudication.

7. The claim was served on the respondent using the registered office address for the respondent as recorded on Companies house. The respondent did not respond.

8. In the absence of a response, a rule 21 Judgment was made on 20 December 2022 and it was sent to the parties on 22 or 23 December 2022. The covering letter for the Judgment was also addressed to the registered office address of the respondent. The delivery of that letter was successful.

9. Mr Omo-Asagie's witness statement, provided to support the reconsideration application, explains that he received the Judgment on 24 December 2022. He is a director of the respondent.

10. The 14 days provided for by rule 71, in which a reconsideration application should be presented, expired on 6 January 2023.

11. It appears from his witness statement that Mr Omo-Asagie decided to take independent legal advice only some time after 25 January 2023. Thereafter the respondent's representative emailed the Tribunal on 27 January 2023 seeking copies of the relevant documents, submitted an application for reconsideration on 30 January 2023, and submitted a draft response form on 10 February 2023. I would observe that the draft response raises a potential defence to the claim, particularly in respect of the time when the claim was entered, albeit there also appears to be acknowledgement that the claimant was not paid some wages due (paragraph 14 of the detailed grounds of response acknowledges this; the reason referred to does not appear as pleaded to be a reason for a deduction to be lawfully authorised).

12. I have also considered the respondent's solicitor's application dated 23 February 2023 and the claimant's response to the application dated 11 March 2023. I note that the claimant objects to the application and the reasons why he does so.

13. In error the Tribunal issued a letter confirming that the response had been accepted. That was an administrative error. I had at that time neither reconsidered my previous Judgment nor accepted the draft response. The Tribunal has already apologised for the error in the letter of 5 April 2023.

14. As I have highlighted, there should, as far as possible, be finality in litigation. I must consider the interests of justice. Rule 71 provides a short timescale for applications to reconsider. A director of the respondent was in receipt of the Judgment in this claim for almost all of the relevant 14 days. He did not seek legal advice, nor did he successfully apply to reconsider the Judgment, until approximately three weeks after that time had expired. The application to reconsider was made over a month after the Judgment had been sent to the parties and over a month after it had been received by a director of the respondent.

15. I have decided that the application was not made in the time required and that time should not be extended (to the extent required for the application to reconsider to be accepted) in the circumstances. There is accordingly no reasonable prospect of the original decision being revoked and the application is refused.

Employment Judge Phil Allen  
11 April 2023

JUDGMENT SENT TO THE PARTIES ON  
12 April 2023

FOR THE TRIBUNAL OFFICE