EMPLOYMENT TRIBUNALS

Claimant: Mr K Sawrey

Respondent: Cosworth Ltd

JUDGMENT

The claimant's application dated **27 February 2023 and 3 March 2023** for reconsideration of the judgment, sent to the parties on **2 February 2023** is refused as it has no reasonable prospects of success.

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

70. Principles
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.

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
(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.

(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.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1) requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having 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.

4. There is a single ground for reconsideration — namely, *"where it is necessary in the interests of justice".* When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

5. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. In the new version of the rules, it had not been necessary to repeat the other specific grounds for an application because an application relying on any of those other arguments can still be made in reliance on the "interests of justice" grounds. The older case law in relation to those specific grounds (for example, whether or not "new" evidence should be accepted at this stage) is still relevant, and should be taken into account where that is appropriate.

6. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were *exceptional* circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

The Claimant's application(s)

7. The Claimant submitted emails dated 27 February 2023 and 3 March 2023, both of which are within the relevant time limit, seeking reconsideration.

8. To the extent that the Claimant seeks to introduced new evidence, I am not necessarily satisfied that the "new evidence" should be taken into account if

there were to be a reconsideration hearing.

9. However, and in any event, I have read what has been submitted, and my decision about whether the application has no reasonable prospects of success is made having taken account of the contents.

10. The Claimant's emails repeat the same arguments that were rejected at the hearing. See paragraph 61 of the written reasons, in particular.

11. The Claimant does seem to understand that the Respondent is arguing: FIRSTLY, that the reason for his dismissal was his absence (and the fact that that absence was allegedly unauthorised and a breach of contract); AND SECONDLY that, because the dismissal reason was absence, then it follows that the dismissal reason does not fall into the definition set out in section 103A ERA (which is set out in paragraph 9 of the written reasons).

12. In his application for reconsideration, as at the interim relief hearing itself, the Claimant does not dispute that he was absent from work. Regardless of whether or not he concedes the first strand of the Respondent's argument (that the dismissal reason was his absence), he is seeking to take issue with the second. He is arguing that, in all the circumstances – and, in particular, the reasons for his absence, and what he has told the Respondent about the reasons for his absence – his absence and his protected disclosures are so closely linked that the dismissal reason should be found to be within section 103A.

13. However, that is an argument that I already understood, from the interim relief hearing, that the Claimant was seeking to make. His proposed "new" evidence adds nothing important to the argument. (I had not understood the Respondent to be seeking to argue that the Claimant had failed to tell them that his absence was because he was not satisfied that they had addressed the concerns raised in his alleged protected disclosures).

14. I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Employment Judge Quill

Date: 3 April 2023

JUDGMENT SENT TO THE PARTIES ON

16.4.2023

GDJ
FOR THE TRIBUNAL OFFICE