



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr R Islam

v

Loomis UK Ltd

JUDGMENT ON RECONSIDERATION

Upon the Claimant's application under Rule 71 (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) ("Rules") to reconsider the judgment:

- a. That the claimant was not unfairly selected for redundancy by an unfair process and discrimination; and
- b. That the claim for holiday pay had been paid, was withdrawn and dismissed.

The Judgment of the Employment Tribunal is that the judgment of 17 February 2023 is varied as follows:

The below paragraph is deleted

2. *The claimant accepted he had in fact received the holiday pay owed to him and withdrew that part of his claim.*

And replaced with

2. *Upon agreement having been reached by the parties during the hearing that the claimant's claim for holiday pay is to be paid in the sum of £325.35 (less tax and national insurance deductions) the claimant is no longer pursuing this claim, it is therefore marked withdrawn and dismissed upon receipt of payment.*

Paragraph 56 is amended as follows:

The claim for holiday pay is marked withdrawn and dismissed upon receipt of payment.

There is no prospect of the judgment being varied or revoked insofar as it deals with the claimant's claim that he was made redundant by unfair process and discrimination which was dismissed.

REASONS

1. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative 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 judgment may be confirmed, varied or revoked.
2. An application for reconsideration shall be presented in writing (and copied to all of the other parties) within 14 days of the date upon which the written record was sent to the parties.
3. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also 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. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations.
5. The procedure upon a reconsideration application is for the Employment Judge that heard the case or gave the judgment in question to consider the application and determine if there are reasonable prospects of the original decision or judgment being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interest of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.
6. If the Employment Judge considers that there is no such reasonable prospect, then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge's role therefore upon considering such an application is to act as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be considered at a reconsideration hearing.
7. In this case, I issued a reserved judgment on 17 February 2023 ('the judgment'). I struck out the claimant's claim of unfair dismissal and discrimination on the basis of race. The claim for holiday pay was no longer being pursued by the claimant agreement having been reached by the parties as to payment and was marked as withdrawn and dismissed.
8. The reconsideration application was made within the prescribed time limit the judgment having been sent to the parties on 20 February 2023. The reconsideration application applies to the whole judgment.

Interests of Justice

9. Judgments can be reconsidered by a Tribunal on its own initiative or on the application of a party where it is necessary in the interests of justice to do so. The phrase “interests of justice” is not defined in the new rules but is likely to include instances where:
- i. The judgment was wrongly made as a result of an administrative error.
 - ii. A party did not receive notice of the proceedings which led to the judgment.
 - iii. The judgment was made in the absence of a party.
 - iv. New evidence has come to light since the conclusion of the hearing (as long as its existence could not have been reasonably known or expected at the time of the hearing).

The tribunal will not agree to reconsider the judgment just because a party disagrees with it. There must be valid reasons for a reconsideration. A Judge has power to refuse an application for a reconsideration if they think it has no reasonable prospect of success.

10. The arguments raised by the claimant in support of his application for a reconsideration of the judgment in respect of his claim for unfair dismissal by way of an unfair redundancy process and discrimination on the basis of the claimant’s religion were argued at some length during the full merits hearing. No new evidence has come to light since the conclusion of the hearing as required under 10. iv. Above.

11. The claim for payment of holiday pay has been settled between the parties the respondent having paid the claimant the sum of £352.35 (minus tax and national insurance) on 24 March 2023. Correspondence from counsel for the respondent confirms that agreement for payment of the holiday pay was reached during the hearing. It is therefore correct to say that that part of the claim was withdrawn and dismissed upon payment. In an email of 11 April 2023, the claimant confirmed that he has received payment.

12. I am able to deal with the application without a hearing. There is sufficient information to dispose of the reconsideration application. There is no reasonable prospect of the judgment being varied or revoked insofar as unfair dismissal and discrimination is concerned. The judgment in respect of holiday pay is set out above having heard from the parties in writing.

13. It is not in the interests of justice to reconsider the judgment further in the circumstances. To allow the claimant a second opportunity would be unjust to the respondent and would infringe the principle that it is in the public interest that there should be finality in litigation.

16. In the circumstances, the reconsideration application is granted in part.

Employment Judge Allen

Date: 24.4.2023

Sent to the parties on: 27.4.2023

GDJ

For the Tribunal Office