EMPLOYMENT TRIBUNALS

Claimant: Mr J Moules

Respondent: Churchill Knight Umbrella Ltd

JUDGMENT

The claimant's application dated **8 May 2023** (an update of his 30 April 2023 application) for reconsideration of the judgment, sent to the parties on **18 April 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. Under the current version of the rules, there is a single ground for reconsideration — namely, *"*where it is necessary in the interests of justice*"*. This contrasts with the position under the 2004 rules, where there specified grounds upon which a tribunal could review a judgment.

5. 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.

6. 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.

7. 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. As was stated in Ebury Partners Uk Limited v Mr M Acton Davis Neutral Citation Number: [2023] EAT 40

> The employment tribunal can therefore only reconsider a decision if it is necessary to do so "in the interests of justice." A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "second bite of the cherry" and the jurisdiction to reconsider should be exercised with caution.

The Claimant's application

8. The Claimant submitted an email dated **30 April 2023**, within the relevant time limit, seeking reconsideration. At his request, I have considered only the amended version submitted on 8 May 2023.

9. The application contains several examples of foul language. Had the application otherwise had merit, I might have had to give consideration to whether or not this amounted to scandalous, unreasonable or vexatious conduct. In the circumstances, it is more proportionate for me to simply ignore this fact, but that should not be taken as an indication that I think it is acceptable for communications of this type to be sent to tribunal staff, and the Respondent, whether intended ultimately for my attention or otherwise.

10. I note that the Claimant does not agree with the Rule 50 decision, and believes that I gave insufficient weight to his arguments. He raises no new relevant points. The matters he raise in the reconsideration application do not cause me to doubt the correctness of the original decision.

11. At lines 98 to 136, the Claimant takes issue with whether the terms available from different FCSA approved organisations actually offered him any genuine choice in the matter of what the terms of the contract between him (as an individual) and the relevant intermediary (standing between him and Concept) would be. He gives reasons for rejecting some, and comments that he did not investigate others in depth. None of this is a reason for me to change any of the decisions I made, or even the written reasons which I supplied.

12. The Claimant takes issue with my findings as per paragraphs 70 and 71 of the liability reasons. As stated in the reasons, my findings were based on the evidence presented at the hearing, orally and in writing. Nothing in the Claimant's application causes me to think that the findings were wrong.

13. Lines 148 to 162 suggest that there is inadmissible evidence (correspondence with ACAS) that would show my finding as per paragraph 77 is wrong. That is not a good reason for me to change that finding. His lines 163 to 171 provide his further argument as to why he disagrees with the finding. There is no reasonable prospect of this argument succeeding.

14. Lines 172 to 178 refer to evidence which the Claimant says was not discussed in the liability reasons. I consider that paragraphs 55 (especially 55.7) and 57 and 58 and 62 gave a sufficient and proportionate summary of my findings on this issue.

15. I have no reason to doubt what the Claimant writes in Lines 179 to 183. However, it is a point more appropriately addressed to the Respondent and HMRC. It is not a reason for any of the decisions I made to be changed.

16. Lines 186 to 250 are noted. The Claimant's analogies at 242 and 243 (similarly to 165 and 166) are offensive and have no place in an application for reconsideration of an unauthorised deduction from wages claim. In any event the arguments raised in Lines 186 to 250 do not create any reasonable

prospect of my decisions being changed. In particular, the argument put forward at Lines 189 to 191 does not support his case that the Respondent agreed that the Margin would be per payslip, or contradict my decision.

17. Lines 251 to 263 criticise the Respondent for the error they made in allocating the Claimant's salary to the wrong tax year. As stated in the liability reasons, my assumption is that the Claimant does have a means of ensuring this is corrected. However, the decision that I made was that it was a matter outside the Tribunal's jurisdiction. The Claimant's argument (Lines 264 to 287) that the overriding objective grants the Tribunal jurisdiction that it would not otherwise have is misconceived. His points at Lines 288 to 328 are matters for him to raise with the Respondent and/or HMRC, not the Employment Tribunal.

18. I am not sure if the Claimant's Lines 329 to 338 are part of his reconsideration request or not. For completeness, this argument is not one which has any reasonable prospects of changing the decisions on any of the complaints which were presented to the Tribunal.

19. Lines 339 to 389 express strong disagreement with my decisions about the Lateness issue and, in particular, my reasons for saying that wages were not properly payable unless and until the Claimant complied with the requirement to submit the timesheet to Concept. My finding of fact was that the Claimant had clearly been told that this was requirement. My decision was that the Respondent did not agree to vary it. The Claimant is simply repeating the arguments that were considered and rejected already.

20. To the extent that the Claimant suggests that the judgment was biased and that that is a reason for it to be changed, no specific evidence or argument has been raised.

21. For the reasons stated above, having considered the Claimant's application, I am satisfied that there is no reasonable prospect of the original decisions being varied or revoked, and the application is refused.

Employment Judge Quill

Date: 11 May 2023

JUDGMENT SENT TO THE PARTIES ON

14.5.2023

GDJ
FOR THE TRIBUNAL OFFICE