



EMPLOYMENT TRIBUNALS

First Claimant: Mr Colin Carman

Second Claimant: Mr Husan Sahota

Respondent: British Airways PLC

Before: Employment Judge M Yale

UPON APPLICATION made by e-mail dated 13th May 2023 to reconsider the Judgment under rule 71 Employment Tribunals Rules of Procedure 2013 dated 28th February 2023.

JUDGMENT

1. The First Claimant's application for an extension of time to apply for Reconsideration is granted.
2. The First Claimant's application for Reconsideration is refused.

REASONS

Application:

1. On 28th February 2023 I passed a reserved judgment on the substantive claims in this case. That judgment was sent to the parties on 11th March 2023. In short, the claims of the First Claimant were dismissed but some of the Second Claimant's claims were successful.

2. I issued some Case Management Orders to prepare for a remedies hearing for the Second Claimant but, in error, those Case Management Orders referred to both Claimants. This clearly caused some confusion, further correspondence was forwarded to me and I

provided further Case Management Orders, pointing out that the original Case Management Orders should not have referred to the First Claimant.

3. On 13th May 2023, a further e-mail was received by the Tribunal on behalf of the First Complainant, in which frustration is expressed at delay in responding to correspondence. The e-mail also set out reasons why the First Claimant believed his case was wrongly dismissed at the Final Hearing and expressing dismay that any appeal was now out of time. On 16th May 2023, a response was received from the Respondent, in which they deem the e-mail on behalf of the First Claimant to be an application for Reconsideration. The Respondent points out that the time for an application for Reconsideration has passed.

Findings of Fact:

4. In my judgment, the fact that the original Case Management Orders for a remedies hearing erroneously referred to the First Claimant clearly caused some confusion in the minds of the First Claimant and his representative, if not others. That confusion was only resolved through further correspondence, which took some time, and led to further Case Management Orders. The First Claimant was represented by his wife and not a professional representative.

5. The arguments contained within the e-mail on behalf of the First Claimant, dated 13th May 2023 contained a number of arguments setting out why the First Claimant maintains he should have succeeded. These arguments are very similar, if not identical, to arguments that were pursued during the course of the Final Hearing.

The Law:

6. Rule 70 of the Employment Tribunal Rules (“the Rules”) states:

A 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...

7. Rule 71 of the Rules states:

...an application for reconsideration shall be presented in writing... 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.

8. Rule 72(1) of the Rules states:

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...

9. Rule 5 of the Rules states:

The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.

Conclusions:

10. The e-mail sent on behalf of the First Claimant dated 13th May 2023, in my judgment, comprised two applications, those being an application to extend the time limit to make an application for Reconsideration and an application for Reconsideration.

11. The original Case Management Orders for the remedies hearing for the Second Claimant's case were sent out at around the same time as the Reserved Judgment setting out my Judgment and Reasons from the Final Hearing. Those Case Management Orders erroneously contained reference to the First Claimant. Despite the Judgment and Reasons being clear in their effect from the face of that document, I accept that the error contained in the original Case Management Orders caused some confusion on the part of the First Claimant and his lay representative, and that that confusion was understandable.

12. Further I accept that the confusion was only resolved when amended Case Management Orders were sent out and this was some time later, as the error was only discovered as result of further correspondence from the Claimants querying compliance with the original Orders by the Respondent.

13. In all the circumstances, in my judgment, it is appropriate and in the interests of justice for me to extend the time limit for an application for Reconsideration up to an including 13th May 2023.

14. I have considered the arguments raised in the e-mail dated 13th May 2023. These arguments are a rehearsal of arguments that were made at length during the 3-day Final Hearing and which I had very much in mind when I drafted the Reserved Judgment. The issue was not solely whether unauthorised deductions were made but whether any such deductions were excluded from the jurisdiction of the Employment Tribunal because they represented reimbursement to the Respondent for salary overpayments. In my Judgment I explained why any unauthorised deductions were, indeed, reimbursement for salary overpayments. Further, I set out in detail in my Judgment why the strict requirements for economic duress to absolve the Claimants from the effects of the COT3 settlement agreements were not met.

15. In all the circumstances, I refuse the application for Reconsideration. In my judgment, this is an attempt to reargue the case put forward at the final hearing and allowing reconsideration would be against the principle of finality in litigation. Therefore, there is no reasonable prospect of the original decision being varied or revoked and reconsideration is not necessary in the interests of justice. The parties should be informed accordingly.

Employment Judge M Yale

Dated: 31st May 2023

Case Numbers: 3312852/2020, 3312853/2020 & 3300548/2021

SENT TO THE PARTIES ON

1 June 2023

FOR THE TRIBUNAL OFFICE