EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr A T Lewis	v	TSG Building Services Plc

JUDGMENT ON RECONSIDERATION

In exercise of powers contained in Rule 72 of the Employment Tribunals Rules of Procedure 2013 (**"Rules"**), the claimant's application of 9 May 2023 for reconsideration of the judgment sent to the parties on 29 April 2023 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Introduction

1. This application for reconsideration was lodged within 14 days of the sending of my reserved judgment, and so it is lodged in time and I have considered it accordingly. The respondent has had the opportunity to comment on the application and I have considered those comments before reaching this decision.

Principles of Reconsideration

2. When approaching any application, and during the course of proceedings, the tribunal must give effect to the overriding objective found at *Rule 2 of the Rules*. This says:

> *"2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*
>
> > *(a) ensuring that the parties are on an equal footing;*
> > *(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
> > *(c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
> > *(d) avoiding delay, so far as compatible with proper consideration of the issues; and*

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

3. The power to confirm, vary or revoke a judgment is found at *Rule 70*. That provides that a judgment can be reconsidered *"where it is necessary in the interests of justice to do so"*. Rule 71 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration is made in time.

4. *Rule 72 (1)* provides:

   "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. …"

5. Where an Employment Judge refuses an application following the application of Rule 72(1), then it is not necessary to hear the application at a hearing. Rule 72(3) provides that the application for reconsideration should be considered in the first instance, where practicable, by the same Employment Judge who made the original decision. I am the judge who made the decision in respect of which the respondent makes his application for reconsideration.

6. The interest of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have interests which much be regarded against the interests of justice (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*).

Reasons for reconsideration application and my refusal

7. My judgment refused the claimant's application for interim relief. As is explained in that judgment, to grant interim relief, I must be satisfied from the papers available to me that the claimant has a 'pretty good chance' of winning his claim. As is also explained, this is a higher bar than first sounds and means that I must be confident that the claim will be won. This means that I must consider that the claimant is very likely to be able to establish all of the facts required to make out all of the legal tests in his claim.

8. The claimant's reconsideration application suggests that I have failed to consider relevant law which he considers shows that he was an employee of the respondent. This law was quoted during the hearing. In my view, as I said at the time, disputes about the employment/worker status of a claimant are unlikely to be ripe ground for successful interim relief unless it is clear from the combined case of both parties that the claimant is an employee. That is a determination of fact, rooted in an analysis of the relevant context and the relationship between the parties, which

cannot be properly determined without hearing full evidence from both parties. That is not appropriate for interim relief, and so I cannot determine that the claimant has a 'pretty good chance' of making out that first step in his claim.

9. For that reason, the claimant has not provided any additional information or evidence which has led me to conclude that it is necessary in the interests of justice for me to reconsider my judgment, and so I do not.

10. As I make plain in my judgment, this finding should not be taken as an indication that the claimant's claim will or will not be ultimately successful. I have not heard the evidence which the final Tribunal will need to hear to determine the overall claim.

Employment Judge Fredericks-Bowyer

Date: 17 June 2023

Sent to the parties on:

23 June 2023

For the Tribunal Office: