



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr K Naik

✓ Dar Corporation Limited

DECISION

In exercise of my powers contained in Rule 2 and 70 Employment Tribunals (Rules of Procedure) Regulations 2013 I refuse the claimant's application for reconsideration or correction of my decision made on 17 February 2021. The application is refused on the grounds that there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. On 18 February 2021 the parties were sent the written judgment following a two day hearing, the reasons for the decision having been given ex-tempore on 17 February 2021 when the reasons were interpreted to the hearing by a court appointed interpreter.
2. Mr Dar, director on behalf of the respondent wrote to the Tribunal to ask for written reasons for the decision to be produced. The written reasons for the judgment were produced by Employment Judge Dean and signed by her on 20 June 2021. It is unfortunate that the signed reasons were not sent to the parties until 12 February 2022.

3. In his request for reconsideration sent by email to the Tribunal on 18 February 2022 the respondent wrote:

“ I would like the decision to be reconsidered. I believe this to be under the best interests of justice, relating to something going wrong at the time of the hearing. Therefore I would like the decision to be reconsidered based on the reasons set out below:

- *As noted we had various communication issues throughout the hearing process which meant that for 2 days the other parties could not hear me at all.--*
 - *The hearing started without me present so I missed the beginning of the hearing and this made it feel like a one-sided process*
- I would like the opportunity to also provide a written witness statement.”*

4. In my initial consideration of the reconsideration application I have considered the substance of the respondent’s application which sets out the reasons why the Tribunal should reconsider the decision and the reasons later sent to them on the basis that it is necessary in the interests of justice to do so and that it is in accordance with the overriding objective.
5. The power to reconsider a judgment is contained in Rule 70 to 73 Employment Tribunals Rules of Procedure 2013. The Rules enable a tribunal to reconsider a judgment where it is necessary in the interests of justice to do so. Rule 72 provides that an Employment Judge shall consider the application. If the Judge considers that there is no reasonable prospect of the decision being varied or revoked the Judge shall refuse the application.
6. I have applied Rule 72 and noting the respondent’s application I am reminded that within the reasons for the judgment it records:

“Evidence

1. I have heard evidence over 2 days that has been heard by Cloud Video Platform and over the telephone. Unfortunately , Mr Dar, the Director of the Respondent Company has had difficulty accessing the video and has given his evidence by a combination of video and telephone. I am grateful that Mr Dalall, the court appointed Interpreter, has assisted the claimant to understand the proceedings and participate in them. All parties have shown great patience to enable the case to be heard. Mr Naik has provided a written witness statement and his evidence has been supplemented by his oral evidence to me. Unfortunately, Mr Dar has not produced a written witness statement but he has given his evidence to me on oath and answered questions put by Mr Naik in cross examination and by me by way

of clarification. I have been referred to papers in two bundles provided by each the claimant and the respondent, neither party has been represented. Having considered all of the evidence I make the following findings of fact.”

7. The respondent's recall of events on 17 & 18 February 2021 differs significantly from that recorded in the ex-tempore and written reasons. Mr Dar joined the hearing initially by Cloud Video platform on 17 February 2021 and engaged in the hearing including cross examination of the claimant and making an enquiry about the status and role of the interpreter and whether the interpreter was a solicitor, it was confirmed he was not and was appointed by the tribunal. Unfortunately following the lunch break on 17 February Mr Dar was unable to access sound and vision on CVP, he joined by video and his access to audio was by telephone. Throughout the afternoon Mr Dar cross examined the claimant and, following conclusion of the claimant's evidence and in light of the respondent's failure to produce a witness statement as directed Mr Dar was enabled to give his evidence in chief before clarification questions from the Tribunal and later he was given the opportunity to recall the claimant to ask more questions of him. Following conclusion of the evidence both Mr Dar for the respondent and the claimant made their submissions on the relative merits of their arguments.
8. The interests of justice require finality between the parties subject to any appeal and the reconsideration provisions do not entitle a disaffected party to reopen issues which have already been determined, in the decision reached on the documents and argument before it. There is nothing in the arguments advanced by the claimant which could lead me to vary or revoke my earlier decision.

Employment Judge Dean
23 January 2023

