EMPLOYMENT TRIBUNALS

Claimant: Ms C Statham

Respondent: UK Atlantis Ltd

JUDGMENT

The respondent's application made during the hearing on 1 February 2023 for reconsideration of the judgment sent to the parties on 20 January 2023 is refused.

REASONS

Introduction

1. In a judgment dated 19 January 2023, sent to the parties on 20 January 2023 I struck out the response as the respondent had not complied with any of the orders dated 31 August 2022 and had not actively pursued their response. Under Rule 38 (3) where a response is dismissed under that rule, the effect shall be as if no response has been presented as set out in Rule 21.

2. At the Rule 21 hearing on 1 February 2023 before Judge Brady, the respondent made an oral application for the judgment to be reconsidered. In accordance with Rule 72 of the Employment Tribunal Rules of Procedure 2013, I joined the CVP hearing in place of Judge Brady and heard the application, as Regional Employment Judge Davies determined it was reasonably practicable for me to do so under Rule 72 (3).

The Law

3. The Tribunal's power to reconsider judgments are contained within Rules 70 to 73 of the Employment Tribunal Rules of Procedure 2013. Rule 70 provides it may be revoke or vary the judgment where it is necessary in the interest of justice. The process is contained with Rule 72. If the Tribunal considers there is no reasonable prospect of the judgment being varied or revoked the application shall be refused and no hearing will take place. Otherwise the Tribunal shall send a

notice to parties setting out a time limit for response and seek views on whether it can be decided without a hearing.

4. The Tribunal must follow Rule 72 in the order outlined above **(TW White & Sons Ltd v White UKEAT 0022/21).** In exercising the power the Tribunal must do so in accordance with the overriding objective.

5. In **Ministry of Justice v Burton and another [2016] ICR 1128**, Elias LJ approved the comments of Underhill J in **Newcastle upon Tyne City Council v Marsden [2010] ICR 743,** that the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. Further, that the courts have emphasised the importance of finality **(Flint v Eastern Electricity Board [1975] ICR 395)** which militates against the discretion being exercised too readily.

6. In **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16** Simler P held:

"..a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.

Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing."

Grounds for application

7. The respondent accepted that they had received all of the Tribunal correspondence including the orders dated 31 August 2022 and the strike out warning dated 4 January 2023. There had been a wholescale failure by the respondent to engage in the proceedings. As a result the claimant had to prepare her own bundle and witness statement and attended the hearing without any of the respondent's documents or witness evidence.

8. The respondent's only explanation for this conduct was that he had been extremely busy.

Conclusions

9. I did not consider this to be a satisfactory explanation that would justify me to conclude it would be in the interest of justice to revoke my judgment. The respondent had willfully ignored the Tribunal orders and correspondence. They could have asked for more time to comply but they did not. The respondent ignored a strike out warning and attended today, after the claimant had prepared for her

case and incurred costs of representation and wanted to effectively start again, in my good judgment for no good reason that would be in accordance with the overriding objective.

10. I considered the balance of prejudice to the claimant to be significant and outweighed the inability of the respondent to defend the claim. I had particular regard to the consideration that should the judgment be revoked, the respondent will also have the advantage of having seen the claimant's witness statement and there was no way to alleviate this disadvantage.

11. For these reasons there is no reasonable prospect of the original decision being varied or revoked.

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Employment Judge S Moore

Date: 6 February 2023

JUDGMENT SENT TO THE PARTIES ON 7 February 2023

FOR THE TRIBUNAL OFFICE Mr N Roche