



# EMPLOYMENT TRIBUNALS

**Claimant:** Saheed Shittu

**Respondent:** Atalian Servest Security Ltd

**Heard at:** London Central (by CVP)

**On:** 09 May 2023

**Before:** Employment Judge Bunting

## Appearances

For the claimant: In person

For the respondent: Ms C Ashiru, counsel

## JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

The Claimant's application dated (15 June 2023) for reconsideration of the judgment set out in written reasons dated 01 June 2023 following a request from the Claimant, is refused because there is no reasonable prospect of the original decision being varied or revoked

## REASONS

### *Introduction*

1. At a preliminary hearing on 09 May 2023, the claimant's claims for race discrimination and unlawful deduction of wages were dismissed as being out of time. The claimant subsequently requested written reasons and, following receipt of those, applied for reconsideration for reasons set out in an email dated 15 June 2023.

### *Principles of Reconsideration*

2. With an application for reconsideration, as at any stage in the proceedings, the tribunal must give effect to the overriding objective found at Rule 2 Employment Tribunals Rules of Procedure 2013. 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. Rule 70 provides a power to confirm, vary or revoke a judgment. This provides that a judgment can be reconsidered *“if it is 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) of the Rules 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. There is no requirement for an oral hearing. The claimant cites Art 6 ECHR in relation to the substance of the application and I, of course, bear that in mind in dealing with the application. However, I consider that there is nothing in Art 6 that would mandate an oral hearing, nor do I consider that there is a need in this case for one.
6. The interest of justice in this case reflects the interests of both parties. The applicant and the respondent to a reconsideration application both have interests which much be regarded against the interests of justice (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*). In *Brown*, Her Honour Judge Eady QC said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation.
7. This was an expectation outlined by Mr Justice Phillips in *Flint v Eastern Electricity Board [1975] ICR936*, who said *“it is very much in the interests of the general public that proceedings of this kind should be as final as possible”*. He also said it was unjust to give the loser in litigation a *“second bite of the cherry”* where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points and bring additional evidence or information which would overcome the reasons given for the loss.

8. Consequently, the provision of evidence said to be relevant *after the conclusion of the hearing* will rarely serve to alter or vary the judgment given unless the party seeking to introduce the evidence can show (Ladd v Marshall [1954] EWCA Civ 1):
  - 8.1. the evidence could not have been obtained with reasonable diligence for use at the trial;
  - 8.2. the evidence would probably have an important influence on the result of the case; and
  - 8.3. the evidence must be apparently credible.
9. There was no application by the claimant to adjourn the case either before, or at, the hearing, to obtain further evidence, instruct a lawyer, or to better marshal his arguments.

*Grounds and reasons of reconsideration application*

10. The application for reconsideration is effectively a re-statement of the claimant's case as it was at the hearing. Reasons are given why time should be extended, and the claimant reminds me of the fact that there is such a power to extend time.
11. In addition, the claimant has submitted further evidence. This is an email from an estate agency dated 21 September 2023. There is an additional email from Milton Keynes Council dated 08 September 2023. It is not clear what these relate to, in what way they assist the claimant or, given the timings, why they were not produced at the hearing.
12. The respondent has not submitted any arguments in response.

*Decision on the reconsideration application*

13. As stated, the claimant's application is a re-arguing of his case as it was at the hearing. I cannot see any new argument that he has put forward.
14. In relation to the further evidence, it is not explained what this shows (or even who the people are). The dates of the events referred to are around the time when the time limits for both claims expired, but no attempt is made to link this back to the reason for the lateness of the claim. Further, as noted, this was not raised at the hearing, nor is it explained why the evidence was not put before me at that point.
15. In any event, it is not the purpose of reconsideration to allow a party to challenge a judgment with evidence which should have been provided prior to the case being determined. In addition, reconsideration is not the opportunity to re-argue the case that was previously unsuccessful. It is a fundamental requirement of litigation that there is certainty and finality.
16. As I said at the hearing, it is impossible not to feel sympathy for the claimant. However, for the reasons set out above, the original judgment stands.

01 July 2023

Sent to the parties on:

03/07/2023

For the Tribunal Office: