



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr W Purcell

**Respondent:** Screen Ink and Solvent Supplies Limited

**HELD AT:** Manchester (by Cloud Video Platform)      **ON:** 27 September 2022

**BEFORE:** Employment Judge Fearon (sitting alone)

## REPRESENTATION:

**Claimant:** Mr W Purcell (In person)

**Respondent:** Mr P Chong (Managing Director of the Respondent)

## JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

The Claimant's application dated 12 March 2023 for reconsideration of the judgment set out in written reasons dated 12 February 2023 is refused because there is no reasonable prospect of the original decision being varied or revoked.

## REASONS

### Introduction

1. At the final hearing on 27 September 2022, the respondent's counterclaim for breach of contract was dismissed as being out of time. Written reasons were subsequently given dated 12 February 2023. The claimant, following written reasons and not following oral judgment given at the final hearing, applied for reconsideration as set out in an email dated 15 March 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. ...”

## **Grounds and reasons of reconsideration application**

5. The application for reconsideration is effectively a re-statement of the respondent’s case as it was at the hearing. The respondent repeats that it could not have made the counterclaim any earlier given the claimant’s mistake in completing the original ET1 form.

## **Decision on the reconsideration application**

6. As stated, the respondent's application is a re-arguing of their case as it was at the hearing. The respondent again says that initially the claim was made only against Mr Chong so he did not respond to the substantive claim and the respondent did not make any counterclaim at that time. The respondent says its counterclaim was made within a reasonable time after the order was made at the preliminary hearing on 14 April 2022. I cannot see that the respondent has put forward any new argument.

7. I remain of the view for the reasons already expressed that the counter claim could have been brought earlier. The parties to the case were clear from the outset and the respondent has not identified anything that prevented it claiming in January 2022 what it later claimed in April 2022.

8. 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.

9. For the reasons set out above, the original judgment stands.

Employment Judge Fearon

Dated 6 August 2023

Sent to the parties on:

17 August 2023

For the Tribunal Office: