



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr A Tweedale

Tithe Barn Club (Aldwick) Limited

Employment Judge A Matthews

Judgment on Application for Reconsideration

Acting in accordance with rule 72 of the Employment Tribunals Rules of Procedure 2013 (the “Rules”) the Employment Judge refuses the Respondent Company’s application for a reconsideration of the Reserved Judgment with Reasons sent to the parties on 7 July 2023 (the “Judgment”). The Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked.

Reasons

Introduction and applicable law

1. The Employment Judge has available to him:

- The Judgment and the papers available at the time it was prepared as referred to in that Judgment.

- An e-mail from the Respondent’s representative timed at 11:17:14 on 31 July 2023.

- An e-mail from the Claimant’s representative timed at 2051 on 8 August 2023.

- An email from the Respondent’s representative timed at 2345 on 8 August 2023.

- An e-mail from the Respondent’s representative addressed to the Bristol office of the Employment Tribunals (the “Bristol ET”) timed at 11:32:40 on 8 August 2023 together with attachments. The attachments were a document entitled “Respondents Submissions for Reconsideration of Judgment” (69 pages – the

“Application for Reconsideration”), a document entitled “New Evidence Bundle Index for Reconsideration Application” (3 pages – the “New Evidence Bundle Index”) and a bundle of documents (75 pages).

2. The Employment Judge must consider this application by reference to rules 5, 70, 71 and 72 of the Rules. So far as they are applicable, they read as follows:

“5 Extending or shortening time

The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these rules or in any decision, whether or not (in the case of an extension) it has expired.”

“70 Principles

A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

71 Application

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72 Process

(1) 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. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.”

3. The grounds for reconsideration are those set out in Rule 70 only, namely that it is necessary in the interests of justice to do so.

Conclusions

4. On 26 July 2023 the Bristol ET sent an email to the parties informing them (amongst other things) that the Employment Judge granted the Respondent’s application for an extension of time for the Respondent to lodge an application for reconsideration until 4pm on 31 July 2023. Notwithstanding, the Application for Reconsideration was received at 11:32:40 on 8 August 2023. The Employment

Judge further extends time to allow the Application for Reconsideration to be considered. Although it was presented a month after the Judgment was sent to the parties, not extending time to address the Application for Reconsideration is likely to cause more difficulty for both parties.

5. Whenever the parties write to the Tribunal, they must copy their correspondence to each other. This is a continuing obligation on both parties. It is reinforced, in the case of an application for reconsideration, by the express wording of rule 71 of the Rules. The Respondent has not complied with this requirement. The Respondent's email and attachments timed at 11:32:40 on 8 August 2023 will be copied by the Bristol ET to the Claimant. For the avoidance of doubt, the Claimant need not respond to the Application for Reconsideration.

6. In essence, the Application for Reconsideration is an application to re-open many of the issues from the hearing. Whilst the grounds for reconsideration in rule 70 of the Rules are set out in wide terms "*where it is necessary in the interests of justice to do so*", reconsideration is not normally a route to a retrial of issues. This is especially so in the case of evidence available or obtainable at the time of the hearing but not provided to the Tribunal at that time.

7. Notwithstanding, the Employment Judge has read all the material supplied as part of the Application for Reconsideration. It is not proportionate to respond individually and in detail to the points raised in the 144 pages of submissions and evidence in the Application for Reconsideration. It is appropriate to comment on some specific procedural points:

- In paragraph 61 of the Application for Reconsideration the Respondent's representative questions the number of video clips viewed by the Employment Judge. The Employment Judge viewed all that were sent to the Bristol ET.

- In paragraph 91 of the Application for Reconsideration the Respondent's representative asserts that they were denied an opportunity to "*put on record the factual inaccuracies within the Claimant's Witness Statement*". The Respondent's representative (with legal advice in attendance throughout the hearing) had full opportunity to question the Claimant and give their own evidence and did so.

- Paragraph 102 of the Application for Reconsideration correctly points to a date error in the Judgment. The date should be "2020" and not "2000". Paragraph 187 of the Application for Reconsideration, again correctly, points out that the dates of the hearing were Wednesday 14 and Thursday 15 June 2023. A Certificate of Correction can be provided on both these points, if required.

- The New Evidence Bundle Index refers to page 30 of the bundle itself and requests that an email be "*kept confidential so as to not prejudice those investigations.*" The document having been disclosed and relied on in these proceedings, the Employment Judge has been shown no basis on which it could justifiably be withheld from the Claimant.

8. As noted above, the Application for Reconsideration addresses the Judgment's findings and conclusions on most of the key issues. Whilst the Employment Judge made the findings of fact set out in the Judgment after full consideration of all the evidence then available, he acknowledges that it is unlikely that any Judgment will be right in all details as far as findings of fact are concerned. For the avoidance of doubt, that is not to say that the Employment judge accepts any of the alternative versions now argued on behalf of the Respondent. Far from it. The matter for the Employment Judge in considering the Application for Reconsideration is whether it contains anything that would throw doubt on the broad findings of fact and the conclusions drawn from them in the Judgment. It does not. The Employment Judge rests on the findings and conclusions in the Judgment on each of the issues raised.

9. The interests of justice ground of review does not mean that in every case where a litigant is unsuccessful they are automatically entitled to have the tribunal review it. Many unsuccessful litigants think that the interests of justice require a review. This ground of review applies in the case where something has gone radically wrong involving a denial of natural justice. This is not the case here. In addition, it is in the public interest that there should be finality in litigation, and the interests of justice apply to both sides.

10. Accordingly the Employment Judge refuses the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge A Matthews
Dated 14 August 2023

Judgment sent to the parties on 31 August 2023

For the Tribunal Office