



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Lightfoot-Webber

First Respondent: Lawcommercial Trading Ltd t/a Lawcomm Solicitors

Second Respondent: Lawcommercial Services Limited

JUDGMENT

The Respondent's application dated **9 August 2023** for reconsideration of the Reserved Costs Judgment dated 10 July 2023 and sent to the parties on 27 July 2023 is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

Background

1. By a claim form presented on 10 September 2022 the Claimant claimed constructive unfair dismissal, made a claim for unlawful deduction from wages in relation to a bonus payment and a claim for a failure to provide a statement of terms of employment. The claim was heard on 21 and 22 February 2023. A remedies hearing took place on 5 June 2023. Submissions were made at the remedies hearing regarding costs, and further submissions regarding costs were made in writing.
2. In a reserved costs judgement dated 10 July 2023, and sent to the parties on 27 July 2023, I determined that the First Respondent must pay £2,000 plus VAT in costs to the Claimant.
3. The First Respondent now applies for a reconsideration of that Costs Judgment. The grounds are set out in the First Respondent's letter dated 9 August 2023. In summary, the grounds are that:
 - a. the First Respondent states that there had been very little consideration

of the breaches of Tribunal directions by the Claimant, in particular failing to exchange witness statements when requested to do so on three occasions. The Respondent says it suffered significant prejudice as a result;

- b. the First Respondent points to the fact that it accepted culpability, applied for relief from sanctions, remedied and apologised where it had fallen short in compliance. It points to the fact that no adjournment or delay was caused. The Respondent says inconvenience was caused to both parties and that a costs order was disproportionate in all the circumstances.

The Rules

4. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 (“the Rules”). Under Rule 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
5. Rule 71 provides that an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties.
6. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out 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.
7. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:
 - “34. [...] 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.
 35. Where [...] 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.”

8. The First Respondent's application was received within the relevant time limit. I therefore consider it under Rule 72.

Discussion

9. In relation to the alleged failure to consider the failures to exchange witness statements by the Claimant, these are referenced in paragraph 21 of the Costs Judgment and were considered by the Tribunal. Indeed, this arose due to the Respondent not providing the Hearing Bundle to the Claimant until two working days before the hearing. The Claimant wished to cross reference the page numbers in her witness statement. As set out in the case law above in Liddington, where a matter has been fully ventilated, a reconsideration is not an opportunity to simply re-litigate. Finality in litigation is important from an underlying policy principle. It is therefore not appropriate to reconsider the Costs Judgment in relation to a matter which was appropriately weighed into the balance in the first decision.
10. There being no adjournment or delay caused to the proceedings does not remedy otherwise unreasonable behaviour. The Tribunal considers that the exercise of its discretion was appropriate in all the circumstances for the reasons set out in the Costs Judgment.

Conclusions

11. Having carefully considered the First Respondent's application and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there is any reasonable prospect of the Judgment or any part of it being varied or revoked. The application for reconsideration is therefore refused.

Employment Judge Volkmer
Date: 26 September 2023

Judgment sent to the Parties on 16 October 2023

For the Tribunal Office