Case No. 2415447/2020

EMPLOYMENT TRIBUNALS

Claimant: Miss C Logan

Respondent: Innovation First International (UK) Limited

JUDGMENT

The application of the claimant made on 6 September 2023, for reconsideration of the Judgment made on 4 August 2023 and sent to the parties on 22 August 2023, is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The application to reconsider was emailed to the Tribunal on 6 September 2023. Rule 71 requires that an application for reconsideration shall be presented in writing within 14 days. This application was not presented within 14 days. In subsequent correspondence the claimant's representative has stated that the application was made at two minutes past midnight. The email appears to have been received by the Tribunal at three minutes past midnight. Within the application made, there is an application to extend time, if an extension is required. Whilst compliance with time limits is important, I have decided that I should consider the claimant's application for reconsideration even though it was sent outside the time required and I have granted the application to extend time to allow the additional day for the reconsideration application to be submitted. It is not in the interests of justice for an application to be rejected because it was sent two or three minutes later than required.

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70). The Court of Appeal in **Ministry of Justice v Burton** [2016] EWCA Civ 714 has emphasised the importance of finality, which militates against the discretion being exercised too readily. In exercising the discretion, I must have regard not only to the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

3. In **Ebury Partners UK v Davis** [2023] IRLR HHJ Shanks said:

> "*The employment tribunal can therefore only reconsider a decision if it is necessary to do so 'in the interests of justice.' A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT.*"

4. New evidence is generally only admissible where a claimant can satisfy the Tribunal that it would have an important bearing on the result of the case and demonstrate that it is in the interests of justice to consider if it was not produced beforehand when it could have been.

5. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

6. Preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes, so far as practicable, saving expense. Achieving finality in litigation is part of a fair and just adjudication.

7. The Judgment in this case was issued after a lengthy hearing. A significant amount of documentation was considered. A large amount of evidence was heard and considered. The claimant provided a very lengthy written submission document. The lengthy reconsideration application is in practice an application by the claimant to have a second bite of the cherry. It re-argues the case, albeit in the context of a lengthy and detailed critique of the Judgment and reasons. As I have highlighted, the interests of justice and the importance of the finality of litigation must be considered when an application like this is made.

8. I do not recognise the account of the hearing contained in the reconsideration application. The respondent's witnesses were subject to lengthy and detailed cross-examination over a number of days. The process was not rushed. The respondent's counsel was not allowed to intimidate; his cross-examination was entirely appropriate. Mr Hamer was fully able to present the claimant's case and was given every opportunity to do so.

9. The application for reconsideration does not provide any information about events which have occurred since the hearing, or detail that evidence/documents have come to the claimant's attentions since the hearing. The application appears to be based upon facts and arguments about which the claimant was aware at the time of the hearing. From what is said in the reconsideration application, I cannot see that any error or mistake was made, including in any of the ways expressed in the numbered points set out at the start of the application.

10. The Tribunal was fully able to determine the issues in the claim despite the delay between the end of the hearing and the day spent in chambers. Two and a half months of that period was as planned at the end of the hearing, the time being taken to allow the claimant to submit written submissions prepared following the hearing, at the claimant's request. The further period of two months delay was unfortunate, but was a result of unavoidable circumstances (personal to a panel member) unrelated to the case. The day set aside was sufficient time for the panel to reach a decision. The panel had received the claimant's written submission document in advance of the day spent in chambers.

11. I do not find that it is necessary in the interests of justice to reconsider the Judgment, based upon the application made by the claimant. There is no reasonable prospect of the original decision being varied or revoked, based upon the reasons given. The application for reconsideration is refused.

12. I note that a letter sent by the respondent's solicitors of 2 October 2023 refers to a second application to reconsider which they say was emailed on 30 September 2023. In reaching this decision I have not seen such an application and one is not recorded on the Tribunal's file.

Employment Judge Phil Allen

11 October 2023

JUDGMENT SENT TO THE PARTIES ON

19 October 2023

FOR THE TRIBUNAL OFFICE