



EMPLOYMENT TRIBUNALS

Claimant: Miss J Endler

Respondent: Mrs Victoria Henderson t/a The Spirit Group

JUDGMENT

The application of the respondent received on 22 September 2023 and dated 21 September 2023, for reconsideration of the Judgment made on 24 August 2023 and sent to the parties on 8 September 2023, is refused.

REASONS

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

1. 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.
2. 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.”

3. As is said in that Judgment, it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party has been denied a fair and proper opportunity to present her case.

4. 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.

5. 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.

6. The Judgment issued, for which the application is made, was a rule 21 Judgment. That is, it was a Judgment issued where a response had not been submitted and accepted. I decided that, on the available material, a determination could properly be made of the claim, and a Judgment was accordingly issued. There is nothing in the application for reconsideration which shows any reason why it would be in the interests of justice to revoke that Judgment where the respondent had not submitted a response to the claim (within the time required).

7. In practice, the reconsideration application addresses the two case management decisions which I made at the hearing on 24 August 2023. Those decisions are recorded in the case management order which was issued following that hearing. The reasons for those decisions were also explained in that order. I have accordingly considered whether I should vary or set aside either of those case management orders, as I can under rule 29 where it is in the interests of justice to do so.

8. The hearing arranged for 24 August 2023 was listed to consider whether the respondent should be granted an extension of time to submit her response. That hearing provided the respondent with the opportunity to explain why such an extension should be granted. The respondent was clearly aware of that hearing in advance because she applied for it to be postponed on 21 August 2023. She did not attend the hearing. Nobody attended the hearing on her behalf, as they would have been able to do. Nothing was provided in writing to be considered at the hearing.

9. The original application to postpone the hearing cited medical grounds for the application. I was aware of those reasons at the time and made a decision on that application. I refused the application to postpone.

10. Accompanying the application to reconsider, is a letter from Dr Short of 1 September 2023. That letter is something new which I had not previously been able to consider as it has been written and provided since my decision. The letter confirms that the respondent was (at the 1 September) suffering from anxiety and depression. It refers to treatment. It provides no other explanation about the impact of the condition on the respondent. It does not state that the respondent was unable to attend the hearing on 24 August 2023 as a result. If the evidence had been provided prior to the hearing on 24 August I could have taken the content into account when making my decision on the postponement application. I do not consider that the content of the report is sufficient to show that it is in the interests

of justice to vary or set aside my decision to refuse to postpone the hearing (even were that possible, the hearing having in fact proceeded as a result of the decision I made).

11. The other decision reached on 24 August 2023 which is the subject of this application, was to refuse the respondent the extension of time sought to submit her response. The respondent's reconsideration application provides some additional information about the basis upon which the respondent says that the extension should be granted and the reasons why she did not respond earlier. The respondent has also now provided an explanation for her non-attendance at the previous hearing (on 16 June 2023) and has provided some evidence that a holiday was booked which included that date. The additional information does not significantly alter the factors I took into account when reaching my decision as set out at paragraph 27(i) to (vii) of the case management order, save for providing some explanation for the matters addressed at (vi). I have considered what has been provided. There remains some lack of clarity about what exactly the respondent knew and when, and why it might be that correspondence sent to her business address or the email address she has used, may not have been received. Had the respondent either chosen to attend the hearing on 24 August 2023 or provide in writing her submissions on the application she had made, I would have been able to consider the additional information when I made my decision at the hearing specifically listed to consider that issue. She did not, so I was unable to take it into account. I have considered whether the further information provided is such that it would be in the interests of justice to vary or revoke my decision, taking account of the importance of the finality of litigation which I have already explained. I have decided that it is not in the interests of justice to do so.

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

Employment Judge Phil Allen

11 October 2023

JUDGMENT SENT TO THE PARTIES ON

19 October 2023

FOR THE TRIBUNAL OFFICE