



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr S Lenczewski

AND

Respondent

Openwork Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD IN CHAMBERS AT Plymouth

ON

17 November 2023

EMPLOYMENT JUDGE N J Roper

DECISION and JUDGMENT

The decision and judgment of the tribunal is that:

- 1. The claimant's application for an extension of time to satisfy the earlier Deposit Order is refused; and**
- 2. The claimant's application for Employment Judge Roper to recuse is also refused; and**
- 3. The claimant's application for reconsideration of the judgment dated 27 October 2023 is also refused.**

REASONS

1. The claimant has made three applications: (1) the first is an application to extend time to pay an earlier Deposit Order; (2) the second is an application for reconsideration of the judgment dated 27 October 2023; and (3) the third is an application for me to recuse myself from that application for reconsideration.
2. These applications are all refused for the following reasons.
3. The background to this matter has been set out by His Honour Judge James Tayler in his Summary Reasons for Dismissing an Application to the EAT

- under Rule 3(10) following a hearing of that application on 26 October 2023. Paragraph 2 of the Order which accompanied those reasons stayed the Preliminary Hearing in Appeal pending an application by the respondent for a judgment dismissing the claims of unfair dismissal and breach of contract. This was because the Judgment, as opposed to the reasons, dated 12 May 2023 and sent to the parties on 22 May 2023, only referred to the holiday pay claim.
4. The respondent then made an immediate application by email dated 27 October 2023 for a confirmatory judgment that the claimant's remaining claims of unfair dismissal and breach of contract had also been struck out pursuant to Rule 39(4) for non-payment of the deposit order.
 5. The Order and Summary Reasons of HHJ Tayler and the respondent's email application were both referred to me on 27 October 2023. It seemed to me clear that all three of the claimant's claims had already been struck out for non-payment of the earlier deposit order, but that paragraph 2 of HHJ Tayler's Order referred to above was correct, namely that the heading of the Judgment dated 12 May 2023 (which was sent to the parties on 22 May 2023) only referred to the holiday pay claim as having been struck out, whereas paragraph 10 of that judgment confirmed that the remaining claims of unfair dismissal and breach of contract had also been struck out. I therefore issued the confirmatory judgment to that effect on the same day, namely 27 October 2023, which the Tribunal Office was able to send the parties on 31 October 2023.
 6. Meanwhile, on 31 October 2023, the claimant made an application "to extend time to pay the deposit order". The respondent replied with its detailed objections to that application by email dated 3 November 2023.
 7. By that stage the claimant had made a further application dated 2 November 2023 which is expressed to be read in conjunction with the first application, and which consisted of two elements: "(1) reconsideration of the Judgment of 27 October 2023 and (2) for recusal of Employment Judge Roper." The respondent also opposes that application, and its reasons are set out in its email dated 7 November 2023.
 8. Against that background I deal with each of the applications as follows.
 9. The first is the "Application to Extend Time to Pay Deposit Order" dated 31 October 2023. The opening paragraph states: "This is an application to extend time to pay a Deposit Order, following an unsuccessful application to the Employment Tribunal to vary, suspend or set aside the Deposit Order, and further, following the dismissal of an appeal challenging that decision, made to the Employment Appeal Tribunal." Further detailed background was then provided, and at paragraphs 9 to 14 an explanation is provided by the claimant as to why he did not pay the Deposit Order in the first place under the heading "Grounds to Extend Time". In short these were that (i) he felt aggrieved that he had not been treated impartially; (ii) paying the Deposit Order would have amounted to an admission that his case had little prospect of success; (iii) he recognises that he has lost on appeal but still wishes to continue with his case; (iv) he has actively pursued his claims and

- argues that it is in the interests of justice to allow the claim to continue; and (iv) he seeks permission to pay the Deposit Order within 14 days of any decision to do so.
10. The respondent's detailed objections are set out in its email dated 3 November 2023. In short these are: (i) the Original Deposit Order was clear and the claimant failed to pay any deposit, and he has provided no explanation as to why did not do so at the time; (ii) no legitimate reasons have been provided as to why did not pay the deposit either in March 2022 when ordered, or subsequently, particularly given that he did not contest the grounds at the time the Deposit Order was made and even consented to one being made if the matter was to be listed for final hearing; (iii) the argument that to pay the Deposit Order would be an admission that the case had little prospect of success is not relevant when the terms of the Deposit Order are clear (namely that the claim would be struck out if the deposits were not paid); (iv) an application has already been made to vary, suspend or set aside the Deposit Order, and this has already been refused as confirmed in the judgment dated 10 March 2022; (v) no application to extend time to pay the deposit has been made for over 18 months since the original deadline expired, and there is no legitimate reason why the claimant could not have applied for an extension of time to pay the deposit earlier; (vi) the claimant asserts that he wishes to continue with his case which has not been dismissed, which is simply not correct. They have been dismissed by failure to pay the deposits as ordered, as confirmed in the judgment dated 20 May 2022 and again in the judgment dated 27 October 2023; (vii) the application is opportunistic given that the claimant has already unsuccessfully appealed, and his application is an abuse of process; and (viii) in any event the claimant has not actively pursued his claim.
 11. I agree with the points raised by the respondent. In particular, the wording of the original Deposit Order was clear, and the claimant failed to pay the deposits as ordered within the relevant time. Accordingly, his claims were struck out by reason of failure to pay the deposits pursuant to Rule 39(4). His earlier application to vary, suspend or set aside the Deposit Order has already been considered and rejected. The claimant has appealed to the Employment Appeal Tribunal against that decision, and that appeal has been rejected.
 12. In these circumstances it is not in the interests of justice to allow the claimant's application, and it is hereby dismissed.
 13. The second and third applications are for (a) reconsideration of the judgment dated 27 October 2023 (which was sent to the parties on 31 October 2023), and (b) for me to recuse myself dealing with these applications. The grounds of the application are set out in the claimant's email dated 2 November 2023 to this effect: (i) the decision to strike out the claimant's claims deprive him of the opportunity to pursue his claims and this is contrary to Article 6 ECHR; (ii) the claimant informed the tribunal that he would apply to extend his time to pay the deposit order but the claims were struck out before that application was submitted; (iii) the claimant's

- application to that effect (that is to say the application above) has merits; (iv) the claimant has alleged bias against me in his applications to the Tribunal and to the EAT; (v) and (vi) I have issued other adverse decisions on the claimant's file and have reacted immediately upon the EAT commenting on this matter, which shows a biased interest in the file, and the decisions were issued immediately (when normally it would take several weeks for any decision to be promulgated); (vii) the claimant recognises that he has lost on appeal and wishes to continue with his case; (viii) the claimant has actively pursued his claim and it is in the interests of justice to allow him to continue; and (ix) a different Employment Judge should therefore consider the application.
14. By email dated 7 November 2023 the respondent has confirmed that it objects to this application for the reasons set out in his first letter of objection above, and also on the following grounds: (i) at the hearing on 26 October 2023 the EAT has found that the claimant's application for reconsideration of the Deposit Order was "a hopeless application", was "no more than an attempt to re-argue points that were, or should have been made, when the application for a deposit order was considered" and are "no more than an attempt to get around the fact that an appeal was not brought against the making of the deposit order". The claimant's latest application is effectively a further attempt to re-argue points which have already been dealt with by the Tribunal and the EAT and/or are matters which should have been raised at a much earlier stage; (ii) the allegation of bias has already been raised by the claimant and rejected by the EAT and the EAT found no evidence to support any allegations of bias. There is therefore no need for me to recuse myself from this latest application; (iii) the latest judgment dated 27 October 2023 merely confirms what had previously been set out in paragraph 10 of the Judgment on Reconsideration dated 12 May 2023.
 15. In the first place I do not consider that it is in the interests of justice for me to recuse myself from the consideration and determination of these current applications. I am aware of the detailed and now rather complicated background to this matter and the applications all relate to previous decisions which I have made. In circumstances where the claimant has already appealed on the basis of alleged bias, which appeal has already been rejected, I feel and confirm that I am able to consider and determine these applications objectively and on their merits. I refuse the claimant's application for me to recuse myself from the determination of these applications.
 16. That now leaves the claimant's application for reconsideration of the Judgment dated 27 October 2023 which was sent to the parties on 31 October 2023.
 17. 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 71 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. The application was therefore received within the relevant time limit.
18. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so. The grounds relied upon by the claimant are set out above.
 19. Judicial discretion as to reconsideration should be exercised having regard to the interests of both parties and the public interest in finality in litigation (Outasight VB Ltd v Brown UKEAT/0253/14/LA).
 20. In Ebury Partners UK Ltd v Davis EAT [2023] the EAT held that while it may be appropriate to reconsider a decision where there has been some procedural mishap, the jurisdiction should not be invoked to correct a supposed error made by the tribunal after the parties have had a fair opportunity to present their case on the relevant issue. This is particularly the case where the error alleges one of law, which is more appropriately corrected by the EAT.
 21. I agree with the respondent that the claimant's latest application for reconsideration is a yet further attempt to re-argue points which have already been dealt with by the Tribunal and the EAT. In addition, this latest judgment dated 27 October 2023 merely confirms decisions which have long since been determined and promulgated and in respect of which the claimant has already had applications to vary suspend or set aside refused. In addition, his appeal has also been refused as having no merits. The Judgment dated 27 October 2023 merely confirms a previous confirmatory judgment that all three claims had been struck out, because this was confirmed in paragraph 10 of the judgment dated 12 May 2022, which in any event merely confirmed that the claims had already been struck out by virtue of Rule 39(4) as a result of the non-payment of the deposit order.
 22. Accordingly, I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge N J Roper
Dated 17 November 2023

Judgment sent to Parties on:

17 November 2023

For the Tribunal Office