



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

Claimant: Alfred Pobi

Respondent: IBA Group Limited

Application for reconsideration DECISION

1. I heard this claim on 7 November 2023. The claimant, Mr Alfred Pobi, did not attend despite having previously applied for an adjournment that was refused by EJ Sudra on 1 November 2023. I dismissed Mr Pobi's claim for unpaid commission in a judgment given orally, and drafted, on 7 November 2023; sent to the parties on 20 November 2023.
2. Mr Pobi had requested an adjournment due to work commitments, but EJ Sudra ruled there were no substantive grounds to depart from the scheduled hearing date. Despite this refusal, Mr Pobi then stated he still could not attend due to prioritising new work over properly pursuing his legal claim. This was Mr Pobi's choice to make, but he cannot now justly complain that he was prevented from challenging evidence, making his own case, or presenting evidence at the hearing.
3. On 21 November 2023, Mr Pobi emailed seeking reconsideration of my judgment under Rule 70, to remove a reference to police discussions and anonymise his name.

The 7 November hearing

4. At the hearing, the respondent was represented. Mr Pobi did not attend or make representations, despite notice. Mr Pobi did not attend or make any representations, despite being provided notice of the hearing date. My clerk attempted to contact Mr Pobi on the morning of the hearing when he did not appear. Mr Pobi responded by email that he could not attend due to work commitments and had asked for it to be rescheduled.
5. I afforded time for Mr Pobi's response but ultimately proceeded, considering the prior refused adjournment and his ongoing non-attendance.
6. I therefore heard unchallenged evidence from the respondent regarding a police investigation into disputed cash withdrawals from Mr Pobi's company credit card. This formed part of my judgment's background findings. I also considered the written material, including such evidence as had been provided by Mr Pobi which I found I could afford little evidential weight as he had neither provided a sworn witness statement, nor attended to be cross-examined about his claim or his documentary evidence.

Law on reconsideration

7. Rule 70 of the Employment Tribunal Rules allows a party to apply within 14 days for reconsideration if a judgment contains an error or new evidence has emerged.
8. Rule 70(1) of the Employment Tribunal Rules of Procedure 2013 provides:

A party may apply in writing, no later than 14 days after a judgment has been sent to the parties, for the judgment to be reconsidered on the grounds that—

- a. *the judgment contains an error arising from an accidental slip or omission; or*
 - b. *new evidence has become available since the conclusion of the hearing to which the judgment relates.*
9. Reconsideration is an exceptional remedy granted only where there has been some material error or procedural irregularity leading to potential injustice in the original decision. The threshold is high and there must be a real prospect the earlier decision would be varied or revoked as a result.

Law on anonymity

Rule 50 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013

10. Rule 50 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 states:

A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person in any circumstances identified in section 10A of the Employment Tribunals Act.

11. Rule 50 goes on to state that in considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

The European Convention on Human Rights

12. The European Convention on Human Rights provides relevant rights under Articles 8 and 10:

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10: Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

13. These rights were incorporated into UK law by the Human Rights Act 1998. The Tribunal must balance the competing ECHR rights when considering whether to make an anonymity order.

Caselaw

British Broadcasting Corporation v Roden [2015] ICR 985, EAT

14. In *British Broadcasting Corporation v Roden*, the EAT emphasised the paramount importance of

the principle of open justice, stating derogations from open justice can only be justified when strictly necessary as measured to secure the proper administration of justice.

15. The EAT described the balancing exercise to be conducted between the conflicting ECHR rights engaged by an anonymity application.

Fallows v News Group Newspapers Ltd [2016] ICR 801, EAT

16. In *Fallows v News Group Newspapers Ltd*, the EAT confirmed the burden of proof is on the claimant to establish the need for anonymity, which requires clear and cogent evidence.

A v Secretary of State for Justice 2019 ICR D1, EAT

17. In *A v Secretary of State for Justice*, the EAT overturned an anonymity decision where the Tribunal had failed to properly consider the convention rights of a third party.

X v Stevens [2003] IRLR 411

18. In *X v Stevens*, the EAT granted a restricted reporting order overturning the Tribunal's decision, relating to a person's transsexual status.

A v Burke and Hare [2022] IRLR 139

19. In *A v Burke and Hare*, the EAT held the principle of open justice assumes all case details should remain public unless identifiable injury to the claimant's convention rights is shown. The Tribunal must balance the competing rights.

Grounds advanced in the reconsideration application

20. Mr Pobi seeks reconsideration to remove the police discussions reference, which he disputes via a solicitor's letter. He also requests anonymizing his name in the judgment documents.
21. Additionally, Mr Pobi reiterates in his application that he had informed the Tribunal he could not attend the hearing due to work commitments and unsuccessfully sought an adjournment. He argues it was unfair to continue the hearing in his absence.
22. His adjournment request had already been refused in advance of the hearing date after due consideration by another Judge. Mr Pobi was on notice that his application was denied and that he was still required to attend the hearing as scheduled.

The judgment

23. To address the first points around the amendments which he seeks to the judgment, it is necessary that we consider that judgment.
24. My judgment included at paragraph 3:

"In January 2022, the Respondent investigated disputed cash withdrawals from the Claimant's company credit card totalling £4,960. The police informed the Respondent that the Claimant had admitted taking the cash."

25. I stated at paragraph 7 Mr Pobi *"has not attended today despite the Tribunal's efforts to facilitate his participation."*
26. I found Mr Pobi had not proven his contractual entitlement to claimed unpaid commission. His non-attendance further undermined the limited supporting evidence. I dismissed the claim on its substantive merits.
27. In the background section of my judgment, I covered Mr Pobi's employment tenure from January 2021 to February 2022 and the nature of his claim for unpaid commission after he had left employment.
28. I made findings of fact, analysing the contractual terms signed by Mr Pobi, requiring him to still be employed, and not on notice, on commission payment dates to be eligible for payment. I found no persuasive evidence that these express terms were overridden. I found, on the evidence presented to me at the hearing, that any discretionary payment was unlikely given the

circumstances of Mr Pobi leaving.

Consideration of grounds

Police discussions reference

29. The reference at paragraph 3 of my judgment summarises the evidence presented to me by the respondent, which Mr Pobi did not attend the hearing to contest or challenge.
30. As Mr Pobi chose not to attend to give counter evidence, it was reasonable for me to rely on the sole account of events before the Tribunal at that time in making my findings.
31. There are no grounds to establish that this reference, or my reliance on the unchallenged evidence presented at the hearing, has caused any procedural unfairness or clear error that could justify reconsideration.
32. Mr Pobi has not demonstrated a real prospect that removing this disputed point would alter my substantive conclusions dismissing his claim on its merits.
33. The application to remove references to police discussions is refused.

Anonymity

34. The Claimant applies for his name to be anonymised to initial and surname only in the judgment. He argues the police discussions reference could detrimentally impact his future job prospects if connected to him publicly.
35. I have considered the Claimant's application under Rule 50 of the Employment Tribunal Rules of Procedure 2013, which allows for restrictions on disclosure to protect a party's Convention rights in specified circumstances.
36. However, Rule 50 also requires giving full weight to the principle of open justice and freedom of expression under Article 10 ECHR. I can only prohibit disclosure if cogent evidence demonstrates this is strictly necessary in the interests of justice.
37. The burden lies on the Claimant to provide clear and convincing grounds that anonymisation is warranted to protect his rights under Articles 5, 8 or 10 ECHR.
38. His concerns over future job prospects do not establish, I find, identifiable harm to his Article 8 private life rights or Article 5 liberty rights sufficient to displace open justice.
39. Furthermore, anonymisation would interfere with the Article 10 right to freedom of expression and the public interest in open proceedings. The Claimant has not demonstrated cogent evidence justifying this exception to the strong presumption in favour of open justice.
40. Even if the police discussions reference remains unchanged, I do not find this specific point rises to the high threshold under Rule 50 of requiring anonymisation as an exceptional measure in this case.
41. Having carefully considered and applied Rule 50, I conclude the Claimant has not established sufficient grounds to depart from the principle of open justice and freedom of expression on the facts presented.
42. The application for anonymity is therefore refused.

Procedural fairness: continuing in the absence of the Claimant

43. By choosing not to attend the hearing after his adjournment request was refused, Mr. Pobi effectively waived his right to participate and be heard. This was a voluntary choice on his part.
44. I carefully considered whether I could and should continue in his absence. I took account of Rules 2 and 31 of the Employment Tribunal Rules of Procedure 2013, which provide discretion to proceed with a hearing where a party does not attend.

45. I balanced Mr Pobi's absence and stated desire not to participate against the need to avoid unnecessary delay and resolve proceedings efficiently as required by the overriding objective (Rule 2). I determined proceeding was fair and reasonable given Mr Pobi had notice of the hearing date and his adjournment request had already been considered and denied.
46. Natural justice principles do not require adjourning in all cases of non-attendance. Mr Pobi was afforded a fair opportunity to take part and chose not to do so. I was satisfied that continuing the scheduled hearing was lawful and appropriate in these circumstances.
47. The respondent was ready to proceed and there was no substantive injustice to Mr Pobi, who was aware his adjournment application had been refused and declined to attend or make alternative representations regardless.
48. As a result, Mr. Pobi did not avail himself of the opportunity to present evidence, challenge the respondent's evidence, make submissions, or provide his account of events.
49. A party cannot generally absent themselves from proceedings then later claim they were prevented from exercising their fair hearing rights - Mr. Pobi had a full chance to participate which he declined to take. His non-attendance was not due to any lack of notice, denial of representation, or refusal of reasonable adjustments - he consciously elected not to attend.
50. Having made that choice, Mr. Pobi cannot now be heard to complain he was unable to cross-examine witnesses or advance his own case when he voluntarily relinquished that ability.
51. It follows that I decline to reconsider my judgment based on procedural irregularity or unfairness.

Overall Conclusion

52. Having carefully considered the grounds advanced, I am not satisfied there is any basis on which I could properly reconsider or materially vary my original judgment.
53. Mr Pobi has not identified accidental slips or omissions, procedural unfairness, or new evidence that would justify reconsideration under Rule 70. The grounds he raises regarding police discussions and anonymity do not establish a real prospect the judgment could be substantially different if reconsidered.
54. Mr Pobi failed to comply with the express requirements of Rule 70 to ensure that the respondent was copied into any application.
55. For these reasons, I conclude there is no reasonable likelihood my original judgment would be set aside, revoked or varied on reconsideration. The application under Rule 70 is therefore refused. My judgment of 7 November 2023 stands.

Judge M Aspinall
Thursday, 23rd November 2023