EMPLOYMENT TRIBUNALS

Claimant: **Mr A. Mehmood**

Respondent: **Goldex Investments (Essex) Limited**

JUDGMENT ON THE CLAIMANT'S APPLICATION FOR RECONSIDERATION

The Claimant's application for reconsideration of the Tribunal's judgment refusing his application for interim relief, sent to the parties on 29 November 2023, is refused pursuant to rule 72(1) of the ET rules.

REASONS

1. By a series of emails between 28 November and 1 December 2023, the Claimant made an application for reconsideration of the Tribunal's judgment, sent to the parties on 29 November 2023, refusing his application for interim relief.

2. Oral reasons were given at the hearing. Written reasons are now provided (in a separate document), pursuant to a request by the Claimant in an email dated 1 December 2023.

The law on reconsideration

3. Rules 70 to 73 of the Employment Tribunal's Rules of Procedure 2013, make provision for the reconsideration of tribunal judgments as follows:

> **70. Principles**
> **A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.**
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> **71. Application**
> **Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.**
>
> **72. Process**
> **(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision**

> **being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting 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. The notice may set out the Judge's provisional views on the application.**
>
> **(2) If the application has not been refused under paragraph (1), the original decision shall be considered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.**

4. The Tribunal thus has discretion to reconsider a judgment if it considers it is in the interests of justice to do so.

5. Under rule 72(1), I must dismiss the application if I consider that there is no reasonable prospect of the original decision being varied or revoked. It is a mandatory requirement for a judge to determine whether there are reasonable prospects of a judgment being varied or revoked before seeking the other party's response and the views of the parties as to whether the matter can be determined without a hearing, potentially giving any provisional view, and deciding how the reconsideration application will be determined for the purposes of rule 72(2): *T.W. White & Sons Ltd v White*, UKEAT/0022/21.

6. If I consider there are reasonable prospects, I must (under rule 72(2)) consider whether a hearing is necessary in the interests of justice to enable the application to be determined. A hearing would, unless not practicable, be a hearing of the full tribunal that made the original decision (rule 72(3)). If, however, I decide that it is in the interests of justice to determine the application without a hearing under rule 72(2), then I must give the parties a reasonable opportunity to make further written representations.

7. In *Outasight VB Ltd v Brown* UKEAT/0253/14 the EAT held (at [46-48]) that the Rule 70 ground for reconsidering Judgments (the interests of justice) did not represent a broadening of discretion from the provisions of Rule 34 contained in the replaced 2004 rules. HHJ Eady QC (as she then was) explained that the previous specified categories under the old rules were only examples of where it would be in the interests of justice to reconsider. The 2014 rules remove the unnecessary specified grounds, leaving only what was in truth always the fundamental consideration: the interests of justice. This means that decisions under the old rules remain pertinent under the new rules.

8. The key point is that it must be in the interests of justice to reconsider a judgment. That means that there must be something about the case that makes it necessary to go back and reconsider, for example a new piece of evidence that could not have been produced at the original hearing or a mistake as to the law. It is not the purpose of the reconsideration provisions to give an unsuccessful party an opportunity to reargue his or her case. If there has been a hearing at which both parties have been in attendance, where all material evidence had been available for consideration, where both parties have had their opportunity to present their evidence and their arguments before a decision was reached and at which no error of law was made, then

the interests of justice are that there should be finality in litigation. An unsuccessful litigant in such circumstances, without something more, is not permitted to simply reargue his or her case, to have 'a second bite at the cherry' (*per* Phillips J in *Flint v Eastern Electricity Board* [1975] IRLR 277).

9. The expression 'necessary in the interests of justice' does not give rise to an unfettered discretion to reopen matters. The importance of finality was confirmed by the Court of Appeal in *Ministry of Justice v Burton and anor [2016] EWCA Civ 714* in July 2016 where Elias LJ said that:

> **'the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (*Flint v Eastern Electricity Board* [1975] ICR 395) which militates against the discretion being exercised too readily; and in *Lindsay v Ironsides Ray and Vials* [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.'**

10. In *Liddington v 2Gether NHS Foundation Trust* EAT/0002/16 the EAT, *per* Simler P (as she then was), held at [34] that:

> **'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 by 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.'**

Assessment of the application under Rule 72(1)

11. In an email of 28 November 2023 at 03:08, the Claimant wrote that he was asking to appeal the judgment on interim relief. An appeal against a judgment is heard by the Employment Appeal Tribunal, rather the Employment Tribunal. If the Claimant wishes to appeal, he should consult the guide sent out with the judgment, paying particular attention to the strict time limits for lodging an appeal.

12. In an email of the same date at 14:00, the Claimant refers to 'an extremely important evidence which can establish that my dismissal is "far more likely" to win this case made under automatic unfair dismissal'.[1] He asked to provide the 'one-page evidence', but it was not attached to the email.

13. By email dated 29 November 2023 at 20:46, the Claimant referred for the first time to an application for reconsideration based on factors which he sets out in two paragraphs of the covering email.

14. Attached to that email was a witness statement and another document. The Claimant's explanation for submitting these as part of this application for reconsideration is that:

[1] The original format of direct quotations is retained in this document

> 'I could not afford a solicitor or a barrister, did all research by myself and I was not sure that I needed to establish how precisely the instructions to extract the report was given to me to pass the "likely to succeed" test for interim relief. I was more focused on the public interest protected disclosures that I could not establish or submit evidence as reckless Management instructions directly relate to my dismissal for safeguarding their corporate tax evasion.'

15. While I understand that, as a litigant in person, the Claimant may have reflected after the event and concluded that he ought to have advanced his case in a different way - and, indeed, that he may have been advised to do so, had he been professionally represented - that explanation does not provide good grounds for reconsidering the judgment.

16. The statement the Claimant has now provided is essentially an attempt to reargue the interim relief application after the event. In part, he repeats points which were made at the hearing and/or seeks to emphasise certain aspects of them; in part, he takes new points which were not taken at the hearing. In so doing he is seeking to 'reargue matters in a different way' and to adopt 'points previously omitted' which, the *Liddington* case confirms, is not a sound basis for reconsidering a judgment.

17. There is no suggestion by the Claimant that the evidence referred to within the statement is evidence could not have been produced at the interim relief hearing. Similarly, none of the detailed points he makes are points which could not have been made at the hearing.

18. The same evidence can still be adduced, and the same points made, at the final hearing, when the Claimant will have an opportunity to cross-examine the Respondent's witnesses. It is at that hearing that the Claimant may seek to establish that the Respondent has submitted 'false information', as he now contends in this email, and in his earlier of the same date (at 14:10).

19. In that earlier email, the Claimant writes that he was 'not given a chance to submit an evidence in the response'. The interim relief process is, of its very nature, a summary process. I was not asked by either party to give them a further opportunity at the hearing to make replies. I read and heard evidence and submissions from both parties and reached my decision on the material presented within the time available.

20. Finally, in the email at 20:46 the Claimant states that the Respondent's conduct (and I infer the Tribunal's judgment):

> 'has directly impacted my human rights as a migrant worker with protected characteristics while all other full statements have proven to be Draconian for me and it is in the interests of justice for the original decision to be reconsidered.'

21. The Claimant makes a similar point in his earlier email at 14:10 and in further emails of 1 December 2023 at 13:30 and 19:05. In his later emails he makes serious allegations as to the Respondent's motives, whose merits I am not in position to assess. He also suggests that the judgment on interim relief may have grave consequences in terms of his immigration status and his private life.

22. The Claimant does not specifically explain in those emails how human rights and equalities considerations require me to reconsider the interim relief judgment. If, as I think likely, he is inviting me to reconsider the judgment on compassionate grounds, that is not an approach which is open to the Tribunal within the legal framework set out above.

23. Finally, in an email of 12 December 2023, the Claimant emphasised the seriousness of his allegations of tax evasion and false statements. This email does not add anything to the Claimant's application.

24. For all these reasons, I am satisfied that there is no reasonable prospect of my varying or revoking its judgment. The application for reconsideration is refused pursuant to rule 72(1). Because I have dismissed it at the first stage of the process, I have not invited the Respondent to comment on the application.

Employment Judge Massarella
Date: 18 December 2023