



EMPLOYMENT TRIBUNALS

Claimant Ms I Bankowska
Respondent Mercor Fire Protection UK Limited

JUDGMENT

The claimant's application dated 11 December 2023 for reconsideration of the judgment with reasons sent to the parties on 21 November 2023 is refused.

REASONS

Background

1. By a claim form dated 23 January 2023, having achieved an early conciliation certificate between 12 November 2022 and 24 December 2024, the claimant brought a complaint for outstanding wages due to her. The claim was brought as an unauthorised deduction complaint under section 13 of the Employment Rights Act 1996. She claimed outstanding wages for September 2022 and sick pay for October 2022. She also claimed outstanding holiday pay under the Working Time Regulations 1998. She was not able to specify how many days or how much holiday pay was due to her on termination of employment.
2. The matter proceeded to a final hearing by CVP video link on 10 November 2023. An interpreter attended, oral evidence was heard. The claimant's complaints all failed. Judgment with Reasons was sent to the claimant on 21 November 2023.
3. By a letter dated 11 December 2023 the claimant made an application for Reconsideration.
4. The claimant's application for reconsideration is made 6 days out of time.

The relevant law

5. Rule 70 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so.

6. Rule 71 provides that 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 as necessary.

7. Rule 72 provides that an Employment Judge shall consider any application made under Rule 71. Where practicable the consideration shall be made by the Employment Judge who made the original decision or who chaired the full tribunal which made it. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused.

8. At tribunal dealing with an application for reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly contained within Rule 2 of the Regulations. This includes ensuring that the parties are an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense.

9. Consideration of whether reconsideration is “necessary in the interests of justice” allows the Tribunal a broad discretion which must be exercised judicially which means having 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 be so far as possible finality in litigation.

The application for reconsideration

10. The claimant’s grounds for reconsideration, which are wide ranging and make some unpleasant allegations about the judge, the interpreter and the respondent that were not raised at all during the hearing, are outlined from her letter of 11 December 2023 as follows

- a) The hearing started late.
- b) The link was sent late.
- c) A link to a previous hearing postponed at the claimant’s own request due to her ill health was also sent late.
- d) The respondent was not technically capable of using the platform.
- e) The claimant’s witness statement was not taken into account.
- f) The judge did not ascertain whether there were any witnesses I wanted to call, there was and he was not allowed to speak.
- g) The interpreter was ill and had difficulty getting the words right ..the interpreter’s incompetence influenced the judge’s attitude towards the claimant.
- h) Any attempt by my side to explain that the translation was not correct was immediately attacked and rejected by the judge.
- i) Respondent forgot to switch of his microphone during a break.

- j) Respondent did not cooperate pre hearing in preparation of a joint bundle but judge went ahead anyway with documents I had prepared.
- k) The Reasons for the decision are not correct.
- l) Not allowed to call Mr Solich.
- m) Mr Marshall for the respondent lied under oath.
- n) No basis without expert evidence for judge deciding that the respondent's record of annual leave was more reliable than the claimant's.

And amount to an overraching submission that the judgment is unfair and biased and a reconsideration is crucial in the interests of justice.

My application of the law to this application

11. The claimant's application is made out of time but I have decided to consider it because I can see that she is very aggrieved about the outcome and I want her to know that I took into account all of her evidence at the final hearing. I also provided full written reasons of my own volition because the translation slowed down the communication of my oral judgment.

12. I have to decide whether or not it is in the interests of justice to reconsider the decision and I have decided it is not. Items a) – d) and g) h) i) and j) were not unusual in managing video hearings but were overcome and everyone agreed to proceed with the hearing. I refer the claimant to paragraphs 28 and 29 of the Reasons.

13. Regarding witness evidence at e) f) l) and m) and n) I refer the parties to paragraphs 3 -11 of the Reasons. The claimant's witness statement and oral evidence under cross-examination were taken into account. Perhaps the most troubling allegation in the application for reconsideration is the suggestion that the claimant was prevented from calling a witness. I refer her to paragraph 6 of the Reasons. Who was to be called, in which order, was not only agreed at the outset of the hearing but typed by the Judge into the Chat Box function so that the interpreter could read it back to the claimant who agreed with it.

14. The claimant says that I did not have expert evidence as to the reliability of her evidence about the documents over the respondent's. The point is fully reasoned at paragraph 22 of the Reasons as to why I preferred one document over another. The factual findings are clear about the claimant having had more time off than that to which she was entitled and therefore not being due any outstanding unpaid leave.

15. The claimant alleges errors in the Reasons at k). The factual findings are set out and the evidence underpinning the findings is referred to. Elsewhere in her application for reconsideration she is clear that she does not agree with the outcome.

16. In reaching the decision not to reconsider I have had regard to the importance of finality in litigation for both parties and I have considered the impact of a reconsideration determination either on paper or in person for the parties and the cost to which that would put both parties. I have had regard to the overriding objective to deal fairly and justly with this case.

17. I accept that the hearing was difficult because of translation delays and because parties did overtalk the interpreter so that I had to intervene often to slow the pace and ask them to await translation, this is at paragraphs 28 and 29 of the Reasons.

18. The claimant seeks, in effect, a rehearing of the case. She is saying that she was prevented from calling Mr Solich, she was not, she agreed as to who she would call and the procedure for the day. She seeks to argue that his evidence about her attendance at work would have changed my view how many days she had taken as leave, it would not, I had her direct oral evidence on that point (his would at best have been corroboratory) and I had documents on that point too, prepared by the claimant.

I have considered that the claimant is not entitled to have the case reheard so as to get a different outcome and for all of the above reasons, in the interests of justice, I decline to reconsider.

Employment Judge **Aspinall**
Date 18 December 2023

JUDGMENT SENT TO THE PARTIES ON
4 January 2024

FOR THE TRIBUNAL OFFICE