



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss J Hind

v

Savoi Limited

Tribunal: Leeds

Dated: 9 January 2024

Before: Employment Judge James

RECONSIDERATION JUDGMENT

(1) The application for Reconsideration of the Judgment dated 16 November 2023, sent to the parties on 27 November 2023 (Employment Tribunals Rules of Procedure 2013 – Rules 70 to 73) is refused for the reasons set out below.

REASONS

1. The reserved judgment dated 16 November 2023 was sent to the parties on 27 November 2023. In a letter dated 7 December 2023, but not received by the Employment Tribunal until 13 December 2023, the respondent made a request for reconsideration of the judgment. That was copied to the claimant who was asked to comment on it.

The Law

2. Rules 70, 71 and 72 of the Employment Tribunal Rules of Procedure 2013 provide as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70. 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.

Application

71. *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.*

Process

72. *(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.*

3. Whilst the discretion under the rules is wide under the 'interests of justice' test, it is not boundless; it must be exercised judicially and with regard, not just to the interests of the party seeking the review, but also to the interests of the other party and to the public interest requirement that there should, as far as possible, be finality of litigation - *Flint v Eastern Electricity Board [1975] ICR 395 at 401*, per Phillips J, at 404.

Decision

Time limits

4. The Judge has carefully considered the contents of the application for reconsideration under Rule 72(1) and decided not to accept it because it was submitted out of time. Requests for reconsideration should be made within 14 days of the day the decision was sent out. The time limit expired on 11 December 2023.
5. It is noted that the respondent emailed the tribunal on 11 December 2023 as follows:

I sent a letter in regards to a reconsideration for an Employment Tribunal and the deadline was today at 4pm. I sent the letter via post on 7th December 2023 and I am slightly concerned that it has not been received in time and if it will affect the current standing of the case as there is a 14-day deadline for reconsiderations from the date that I received the judgment via email. The case reference number is 1805115/2023.

The respondent did not attach the reconsideration letter to that email.

6. The claimant objects to the reconsideration request being considered two days later, on the basis that she has not experienced difficulties with the Christmas post. In any event, she objects to the request for reconsideration on its merits.
7. Whilst Employment Judge James notes that there was only a delay of two days, and accepts that it may have been the case that the Christmas post delayed receipt of the letter, the letter could have been sent sooner. More importantly,

it could have been emailed, at the same time as the email was sent on 11 December 2023.

8. In any event, as noted below, the change suggested by the respondent would have a relatively minimal effect on the overall level of the judgment (£189.11). In such circumstances, there is less reason to exercise discretion in favour of the respondent. Yet further, it is noted that the respondent has not paid any amount to the claimant, when it could have at least paid her the amount it accepts is due on the basis of the weekly wages the respondent says should have been applied.

Merits

9. In any event, Employment Judge James does not consider that the reconsideration request would have had any reasonable prospect of success and it would have been rejected for that reason, even if it had been accepted out of time.
10. Employment Judge James notes that the reason for the reconsideration request is that the average salary has been worked out on the basis of the total remuneration received by the claimant, including the delivery allowance. The total figure used to work out the weekly wage in the judgment is £6869.18, which includes the delivery allowance claimant that was paid for each delivery. The respondent says that payment should be excluded, which gives a figure of £6066.18. In terms of the weekly wage, this gives an average weekly wage of £173.22, compared to the figure of £196.26 used in the judgment. The claimant has been awarded 8.2 weeks at that rate, a difference of only £189.11.
11. The respondent could have provided evidence in relation to wages at the hearing itself. It is not immediately clear to Employment Judge James why the delivery allowance should not form part of the overall weekly remuneration, rather than being paid by way of expenses. There is no evidence before the tribunal to suggest that it is the latter, rather than the former. Therefore, in Employment Judge James's judgment, the delivery allowance has properly been added into the weekly salary, as part of the weekly remuneration.

Conclusion

12. For all of the above reasons, the reconsideration application is rejected because it was submitted late; and in any event, it would have been rejected under Rule 72(1) because it has no reasonable prospect of success.

Employment Judge James
North East Region

Dated 9 January 2024