



EMPLOYMENT TRIBUNALS

Claimant: Mr S Stanford (formerly Mr S Wawrzyniak)

Respondent: Unipart Group Limited

RECONSIDERATION JUDGMENT

The claimant's reconsideration application is refused because there is no reasonable prospect of the Judgment of 1 November 2022 being varied or revoked.

ORDER

- (1) The claimant appears to be applying to vary or revoke the order of 1 November 2023 refusing him permission to amend to add a complaint of victimisation, an order incorporating a decision that no such complaint was before the Tribunal. If and in so far as he is making such an application, the application is refused.
- (2) The claimant's application for an extension of time for appealing to the Employment Appeal Tribunal ("EAT") is also refused.

REASONS

1. For the full background, please see the written version of the Judgment & Order that was sent to the parties on 9 November 2022 and the written reasons that were sent to the parties on 31 January 2023.
2. The claimant was from 3 April 2020 to 4 February 2022 an agency worker and the respondent was the end user in what could be described as the conventional worker / agency-employer / end-user relationship. His engagement with the respondent came to an end after the claimant publicly posted online, on Google, an uncomplimentary and, for the respondent, potentially reputationally damaging review of his workplace. His principal claim was to the effect that the termination of his engagement with the respondent was a breach of regulation 17(2) of the Agency Worker Regulations 2010 (the "Regulations"). He also had a claim under regulation 5 of the Regulations.
3. There was a two day final hearing, before me – Employment Judge Camp – and Members Mrs Rawlins and Mr Perkis on 31 October and 1 November 2022. We made two relevant decisions: a Judgment dismissing the claims under the Regulations (the regulation 17 claim on its merits; the regulation 5 claim because of time limits); an order refusing permission to amend to bring a victimisation complaint under the Equality Act 2010 (for a

variety of reasons, including time limits in particular). We gave full reasons for those decisions orally on 1 November 2022. As already mentioned, the written version of the Judgment and Order was sent out on 9 November 2022 and the written reasons were sent out on 31 January 2023.

4. It appears that the claimant made a reconsideration application by an email of 3 November 2022, which had attached to it a letter dated 2 November 2022. I use the word “*appears*” because I was unaware of the application until July 2023, when the Tribunal administration sent me a copy of it, together with a copy of the claimant’s email of 18 July 2023 and letter of the same date labelled “*Reminding application for a reconsideration and application for the time extension*”.
5. What I was aware of in November 2022 was an email from the claimant of 7 November 2022 with an attached letter dated 2 November 2022 asking for written reasons because “*I want to appeal from ... the judgment to the Employment Appeal Tribunal*”. Written reasons were ultimately provided because of that email and letter. In response to that letter the claimant was at my direction sent an email by the Tribunal on 24 November 2022 explaining to him that the written reasons, which included criticisms of his behaviour, would be published online and double-checking with him that he nevertheless wanted them. He replied on 30 November 2022 confirming he did want written reasons. His email included this: “*I still want [to] go forward with my application to reconsider the case or and appeal from the Judgment.*” As I did not know about his email of 3 November 2022 and enclosed application for reconsideration, I took this to mean simply that the claimant was intending to apply for reconsideration as well as or instead of appealing.
6. I have provided the information in the preceding two paragraphs to explain why I did not deal with the claimant’s reconsideration application sooner. It is, to say the least, most unfortunate that his email of 3 November 2022 and attached letter dated 2 November 2022 containing the application were not put before me at the time. However, it does not affect the merits of the application.
7. As already mentioned, broadly two decisions were made at the final hearing: a decision – a judgment – that the claimant’s claims under the Regulations failed; a decision – an order – refusing permission to amend to add a victimisation complaint. Part of the decision refusing permission to amend concerned what complaints were and were not before the Tribunal following various directions and orders by other Employment Judges, at preliminary hearings and otherwise. See paragraphs 6, 8 to 10, 24 to 26 and 53 to 66 of the written Reasons. In particular, we – the full Tribunal – decided that when the final hearing started the only complaints that were before us were the complaints under the Regulations and that the claimant could not pursue a victimisation complaint without making an application to amend.
8. Reconsideration only applies to judgments. The only way to challenge an order other than by appealing to the EAT is to apply for it to be varied, suspended or set aside in accordance with rules 29 and 30.

9. In the overwhelming majority of cases, an applicant for reconsideration cannot sensibly explain why reconsideration is necessary in accordance with rule 71 without first seeing the written reasons. This is presumably why the time limit for applying for reconsideration is 14 days of the date that the written reasons were sent, if they were sent later than the judgment itself. In the present case the claimant applied for reconsideration before even the written version of the Judgment & Order was sent out. It was a premature application. Had I known about it in November 2022 I would have said so in a letter to the claimant. Be that as it may: the claimant did not add to his application following receipt of the written reasons; I can only deal with the application the claimant has made.
10. In the reconsideration application of 2 and 3 November 2022, there is no discernible challenge to the Judgment dismissing the complaints under the Regulations; certainly not a reasoned challenge to it. The only thing the claimant challenges is the Order. In particular, the claimant alleges that a victimisation complaint was before the Tribunal, should have been considered, and was not considered.
11. The reconsideration application therefore fails because reconsideration only applies to judgments and the decision the claimant is attacking is not a judgment. The claimant's application discloses no basis for varying or revoking the Judgment and therefore there is, in accordance with rule 72(1), no reasonable prospect of the Judgment being varied or revoked.
12. Accordingly, I am treating the claimant's 'reconsideration' application primarily as an application to vary or set aside the Order of 1 November 2023 refusing him permission to amend to add a complaint of victimisation, an order which incorporates a decision that no such complaint was before the Tribunal. I refuse that application because:
 - 12.1 the Order, and the decisions that are part and parcel of it, were decisions that it was open to us to make;
 - 12.2 the claimant's application adds nothing to the submissions he made or that it was open to him to make at the hearing;
 - 12.3 there has been no material change of circumstances that could potentially justify varying or setting aside the order.
13. In his letter to the Tribunal of 18 July 2023 in which he provided a reminder of his reconsideration application, the claimant asked for a "*decision for extending time for appeal [to] no later than 13 months after the Judgment*". The request was made on the following basis: "*Because of the legal requirements I need to submit my appeal to EAT together with the decision on reconsideration of the Judgment. The fact that I didn't receive a decision [on the reconsideration application] caused that I wasn't able to submit my appeal to EAT.*"

14. I refuse the request for an extension of time for appealing. This is because the Employment Tribunal has no power to grant it – only the EAT and Court of Appeal have that power. Even if I had the power, I would not grant the claimant’s request:
- 14.1 the standard letter that was sent to the claimant with the Judgment & Order on 9 November 2022 provided relatively detailed information about applying for reconsideration and appealing. Amongst other things, it stated that the time limit for appealing was “*42 days after the date the separate written reasons are sent if you ask for them*” and that it was a strict time limit. It also directed the claimant to read, and provided a link to, the HMCTS publication, “*Employment tribunals: The judgment T426*”. That publication includes this: “*An application for reconsideration does not change the time limit for making an appeal and you may appeal while waiting for the result of the application.*”;
- 14.2 the standard letter referred to in the previous paragraph also refers to and provides a link to the HMCTS publication, “*How to appeal to the employment appeal tribunal (T440)*”. This makes clear – as does the EAT Practice Direction – that the ET’s decision on any reconsideration application need only be provided if available, and that if required documentation supporting an appeal is not available, the appeal can be submitted without it, so long as a written explanation for its omission is provided;
- 14.3 if the claimant was really waiting for a decision on the reconsideration application because he thought he had to have it in order to appeal, I would have expected him to have chased the Employment Tribunal for it shortly before the time limit for appealing expired – which by my calculation was on 14 March 2023 – and, in any event, well before 18 July 2023;
- 14.4 the claimant has presumably formulated his grounds of appeal, but has not provided them or even summarised them and it is unclear what error of law, if any, he believes the Employment Tribunal to have made;
- 14.5 come what may, I can see no basis for the claimant’s request for an extension of time to 13 months after the Judgment, i.e. to December 2023.

Employment Judge Camp

23 July 2023