



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Badshah

Respondent: Castle Villas Ltd

HELD in Sheffield

ON: 8 January 2024

BEFORE: Employment Judge Brain

JUDGMENT ON RECONSIDERATION

The Judgment of the Employment Tribunal is that there is no reasonable prospect of the Judgment dated 21 April 2021 being varied or revoked. The claimant's application for reconsideration is refused.

REASONS

1. The claimant applied on 11 and 12 December 2023 for reconsideration of the reserved judgment promulgated on 21 April 2021 (*"the 21 April 2021 Judgment"*).
2. By a reconsideration judgment promulgated on 21 December 2023, the reconsideration application was refused.
3. On 3 January 2024, the claimant made a repeat application for reconsideration of the 21 April 2023 judgment. Rule 72(1) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that *"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 separate 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"* [emphasis added].

4. There is nothing in principle to stop a party making more than one application for reconsideration of a judgment. However, a second application (where a first application has been properly refused) is only likely to succeed in exceptional circumstances – **Ray Bright TV Services Limited v Smith** [1973] ICR 640, NIRC. The “*special reasons*” required by rule 72(1) will also have to satisfy the “*interests of justice*” test in rule 70- the interests of justice being the ground upon which a reconsideration application may be granted.
5. The claimant’s application of 3 January 2023 repeats much of what was said by her in the application of 11 and 12 December 2023. Nothing new was advanced. No special reasons for reconsideration suggested. Her argument appears to be that the 21 April 2021 Judgment is a nullity.
6. The 21 April 2021 Judgment dealt with two issues. The first issue was that of material non-compliance with Employment Judge Wade’s Unless Order of 7 September 2020. The second issue dealt with the claimant’s applications dated 13 September 2020 and 2 October 2020 to amend her claim.
7. Upon the first issue, the Tribunal held there to be material non-compliance with Employment Judge Wade’s Unless Order. The claimant applied for relief from sanctions on 4 May 2021. That led to the Tribunal issuing a judgment dated 8 July 2021 (“*the 8 July 2021 Judgment*”) refusing the claimant’s application for relief.
8. The 8 July 2021 Judgment was the subject of an appeal by the claimant to the Employment Appeal Tribunal. This upon the basis that the claimant had requested a hearing in her 4 May 2021 which request was not dealt with.
9. The 8 July 2021 Judgment was revoked and the issue of relief from sanction was determined afresh by Employment Judge Deeley on 28 June 2022. The application was refused. As the claimant’s counsel said at the hearing before the EAT held on 8 November 2023 and convened under rule 3(10) of the Employment Appeal Tribunal Rules 1993, this effectively served to dispose of the claimant’s appeal against the first issue dealt with in the 21 April 2021 Judgment (dealing with the Unless Order).
10. Permission for the claimant to appeal against Employment Judge Deeley’s Judgment was refused at the rule 3(10) hearing of 8 November 2023. While there was a challenge as to whether Employment Judge Wade’s Unless Order was properly made, it was not suggested by the claimant’s counsel at the Rule 3(10) hearing that the 21 April 2021 Judgment was somehow a nullity or nugatory.
11. The 21 April 2021 Judgment was properly made. The reconsideration applications of 11 and 12 December 2023 and 3 January 2024 were made considerably outside the time prescribed by the Employment Tribunal Rules. The matter was aired before the Employment Appeal Tribunal at a Rule 3(10) hearing at which no point to the effect that it was a nullity or nugatory was taken on behalf of the claimant by her counsel. It is far too late in the day to raise this as an issue before the Tribunal now.
12. In any case, the claimant has applied for relief from the sanction imposed by the 21 April 2021 Judgment, had a hearing in respect of relief from sanction and this has been refused. The reconsideration applications (of December 2023 and January 2024) in respect of the first issue in the 21 April 2021 Judgment are

unmeritorious. It can be said that there is no reasonable prospect of that part of the 21 April 2021 Judgment being varied or revoked.

13. The second issue dealt with in the 21 April 2021 Judgment was the refusal of the claimant's applications to amend her claim. A reconsideration application was made by the claimant on 3 May 2021. This was refused in the 8 July 2021 Judgment.
14. HHJ Eady was of the opinion (when issuing a ruling under Rule 3(7) of the EAT Rules) that there were no reasonable prospects of challenging the refusal to reconsider the rejection of the amendment applications.
15. There has been no appeal against the 21 April 2021 Judgment in respect of the refusal to allow the amendment applications. As was said in paragraph 15 of HHJ Tayler's Judgment at the Rule 3(10) hearing, if there was an error of law in refusing the amendment applications, then that should have been challenged by an appeal against that part of the 21 April 2021 Judgment and not by way of an appeal against the refusal of the reconsideration application of 3 May 2021. In paragraph 18 of his judgment, HHJ Tayler concluded there to be no reasonable prospect of bringing an appeal in respect of the refusal to reconsider the refusal of the amendment applications.
16. Again, therefore, it can be said that there is no reasonable prospect of the second limb of the 21 April 2021 Judgment being varied or reconsidered.
17. The EAT encouraged the claimant (at paragraph 22 of HHJ Tayler's judgment) to focus on preparing for the hearing at which the primary complaints set out in her claim form may be determined. The Tribunal made similar observations in paragraph 49 of the 21 April 2021 Judgment and paragraph 38 of the 8 July 2021 Judgment. The Tribunal is fortified that the EAT has offered like encouragement and, with respect to the EAT, echoes what was said in in paragraph 22 of the Rule 3(10) judgment.
18. The reconsideration application stands dismissed.

Employment Judge Brain

23 January 2024