



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Ithia

**Respondent:** (1) MUFG Securities Ltd  
(2) M Conway

## JUDGMENT

- (1) The claimant's application dated 3 January 2024 for reconsideration of the costs judgment sent to the parties on 22 December 2023 is refused because there is no reasonable prospect of the original decision being varied or revoked.
- (2) The respondent's application dated 17 January 2024 for a payment on account of costs is effectively an application for reconsideration and is refused because it is out of time and in any event there is no reasonable prospect of the original decision being varied or revoked.

## REASONS

### Claimant's application

1. There is no reasonable prospect of the original decision being varied or revoked. The majority of the points raised by the claimant were either argued by him during the course of the hearing and considered by the Tribunal, or were considered of the Tribunal's own volition, and no new issues have been raised save for an issue in respect of the treatment of judicial mediation.
2. As to the references to judicial mediation, it is customary for judicial mediation to be confidential and not to be referenced during the course of proceedings. In the present case however, both parties sought to rely on the conduct of the other in respect of the judicial mediation, thus waiving the confidentiality of the process. The Tribunal took care to distinguish offers made by the respondent in respect of the whole of the proceedings (including equal pay) which remained privileged and where the claimant had not waived that privilege and did not take such offers into account (see paragraph 35 of the Judgment). Further, the only reason the Tribunal considered that there had not been unreasonable conduct in continuing with

the proceedings in June 2021 prior to the mediation was because the mediation was due to take place (see paragraph 38 of the Judgment). Finally, the Tribunal in any event did not order that costs should be paid from the point of mediation in September 2021.

Respondent's application

3. The respondent applied on 17 January 2023 for a payment of costs on account of the costs ordered by the Tribunal, asserting that these could be ordered under Rule 78(1)(a). Rule 78 provides:

(1) A costs order may –

- (a) Order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;
- (b) Order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment...

4. The original application for costs made by the respondent was for costs under Rule 78(1)(b), to be subject to detailed assessment, and was successful. Rule 78(1)(a) refers to 'the costs' of the receiving party, not to the costs or part of those costs, in contrast to the wording of Rule 78(1)(b), and requires a summary assessment by the Tribunal of all the costs sought, capped at £20,000. The two headings are intended to be in the alternative, and it is not open to the respondent to seek costs on account up to £20,000 plus further costs to be subject to detailed assessment.

5. In any event, had the respondent sought to argue that this was permissible, it would have to have done so by way of reconsideration. The application was not made until 17 January 2023, which is outside the 14 day time limit for an application of reconsideration to be made.

Employment Judge Keogh

Date 5 February 2024

JUDGMENT SENT TO THE PARTIES ON

.....7 February 2024.....

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FOR THE TRIBUNAL OFFICE