



EMPLOYMENT TRIBUNALS

Claimant: Ms L Tudorica

Respondent: Once Upon a Time Day Nurseries Limited

JUDGMENT ON RECONSIDERATION

Rules 70-73 of the Employment Tribunal Rules of Procedure 2013

Upon the Claimant's application, made on 8 November 2023, to reconsider the judgment sent to the parties on 24 October 2023 under Rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing, the application for reconsideration is refused as there is no reasonable prospect of the judgment being revoked or varied.

REASONS

Introduction

1. On 24 October 2023, the parties were sent the Employment Tribunal's reserved judgment.
2. On 7 November 2023, the Claimant wrote to the Employment Tribunal to ask for an extension of time to apply for reconsideration on the basis that she was experiencing difficulties in her personal life and her grandmother had become unwell.
3. On 8 November 2023, the Claimant wrote to the Employment Tribunal to explain that sadly her grandmother had passed away. Later that day, she made an application for reconsideration. In her application:
 - a) The Claimant reiterated the evidence she gave at the hearing that the evidence she had regarding the three warning rule was what she was told at the time, and what she saw occurring at a garden party. She also referred to a document in the bundle.
 - b) At the hearing she argued that the Respondent was under a contractual obligation based on what was written on its website. In her application she made a similar argument based on what was in the Parent Handbook.
 - c) She reiterated arguments she made at the hearing regarding the damage that can be caused to a child if they are left to cry for lengthy periods.

- d) She reiterated the argument she raised at the hearing regarding what she was told about her daughter's development goals.
- e) She attached a piece of evidence not previously before the Tribunal which she said was relevant to the ratio of staff to children.
- f) She reiterated an argument raised at the hearing that she was dismissed regarding complaints, which she said were not an accurate account of what occurred.

The relevant Rules and case law

- 4. Rules 70 to 73 of the Employment Tribunals Rules of Procedure, which are contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 SI 2013/1237, set out the procedure for tribunals to reconsider judgments:

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.

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.

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. (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

- 5. The 14 day time limit may be extended by virtue of the employment tribunal's general power to do so under rule 5. (Rule 5: The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired). Such an application can be granted even where the initial 14 day time limit has already expired. There is no requirement that the

party should demonstrate that compliance with the time limit was 'not reasonably practicable' or that it is 'just and equitable' to extend the time limit.

6. In *Outasight VB Ltd v Brown* [2015] ICR D11, EAT, Her Honour Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, 'which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation'.
7. In *Stevenson v Golden Wonder Ltd* [1977] IRLR 474, EAT, Lord McDonald said (regarding review provisions under an earlier version of the rules) that they were 'not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before'.

Extension of time for application

8. While the Claimant's application for reconsideration was made late, the Claimant did apply for an extension of time within 14 days from the date the judgment was sent to the parties. The Claimant explained the basis of her application for an extension of time in her email to the Tribunal dated 7 November 2023. She then subsequently made her application for reconsideration the following day. In the circumstances, and particularly in light of the fact that an extension of just one day is required, an extension of time is granted. The Claimant's application for reconsideration of the judgment will be considered.

Reasons for refusal

9. The Claimant's application for reconsideration is refused. The Claimant raised all the points or arguments set out in her application during the hearing. The Tribunal took those arguments into account. It is not in the interest of justice to allow the Claimant to reiterate arguments she has already raised. In reaching this decision, I have had regard to the Respondent's interests and the public interest requirement that there should, so far as possible, be finality of litigation.
10. The Claimant has sought to adduce a new piece of evidence regarding the ratio of staff to children and raise a different point about the contractual obligations on the Respondent. There is no arguable basis for permitting the Claimant to adduce new evidence, or raise a slightly different argument, after the judgment has been issued. The evidence could have been adduced at the hearing, and the argument about the Parent handbook could have been raised at the hearing. As noted above, the EAT confirmed in *Stevenson v Golden Wonder Ltd* that reconsideration is not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before. In any event, the evidence the Claimant sent to the Tribunal with the application is not

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sufficiently relevant to any of the matters which the Tribunal had to decide that it would have made any difference to the outcome. The application to reconsider the judgment is refused as there is no reasonable prospect of the judgment being varied or revoked.

Employment Judge Annand

Date: 25 January 2024

JUDGMENT SENT TO THE PARTIES ON
7 February 2024

FOR THE TRIBUNAL OFFICE