



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Soltanimohammadi

**Respondent:** AM Construction and Engineering Limited

**UPON APPLICATION** made by the Claimant by email dated **5 January 2024** to reconsider the judgment dated **6 November 2023** under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing:

## JUDGMENT ON RECONSIDERATION

The Claimant's application for reconsideration of the judgment is refused.

## REASONS

1. The procedural rules governing an application for reconsideration are set out in rules 70 – 73 of the Employment Tribunal Rules. The parts of the rules that are particularly relevant at this stage of the application are as follows (my underlining):

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. The Claimant has made an application for reconsideration in a 21-page application that covers a number of matters. He summarises his application on page 1 as follows, which I have set out in numbered paragraphs:

- a. The Employment Tribunal (ET) had already accepted my right to have my unfair dismissal claim heard. The 6 November hearing was a “back-track” based on technical legal detail, not the spirit of the law.
  - b. The Tribunal at the November hearing ignored the documentation previously provided to the ET about my mental health and my emergency visit to look after my parents. Both factors are important when looking at the submission timescales, as is the issue about when the respondent’s actual notice of termination was issued (and the conflicting reasons given for the termination).
  - c. English is not my first language. So, while I am able to structure my thoughts in writing, I still find the to-and-fro of fast conversation (e.g. early meetings with Citizens Advice Bureau and particularly the 6 November 2023 hearing) a real challenge. This submission has also been helped by English friends, who have polished my language considerably.
  - d. I have tried to action everything as quickly as I can - the judge at the 6 November hearing commended me for that. Yet I do not have the resources to pay for legal representation. So, whilst I have access to the internet, I am at a distinct disadvantage to the respondent’s legal team as to the legal processes, timescales, etc.
  - e. The respondent has repeatedly failed to exchange document bundles and witness statements by the agreed deadlines without apparently being chased by the ET. The respondent is simply not acting openly, transparently or in good faith.
3. I must note at the outset that it appears from the Claimant’s application that a video recording of the hearing was made either by him or someone else present in the room. This is implicit in some of the points he makes in his application. To make a recording of Tribunal proceedings is strictly prohibited and is in fact a criminal offence, as notices displayed prominently on the doors of the Tribunal rooms make quite clear. The file will accordingly be referred to the Regional Judge for further consideration. In the meantime I make it clear to the Claimant that no such recording would be admissible in evidence in any subsequent hearing related to this matter in any court or tribunal and he must not make any further such recordings.
4. Turning to the Claimant’s application, paragraph (a) above is a correct statement in that the claim was originally accepted by the Tribunal. When I came to consider the claim on 6 November 2023, I saw that there was an issue as to the Tribunal’s jurisdiction to hear it as there was no dispute between the parties about the termination date of the Claimant’s employment, which was 9 October 2022. The claimant approached ACAS on 31 January 2023 (outside the three-month limitation period) and received a certificate dated 2 February 2023. He submitted his claim to the tribunal on 7 February 2023 and he was therefore on the face of it out of time.
5. The question of whether the Tribunal has the jurisdiction to hear a claim is not simply a technicality. If a claim is out of time the Tribunal cannot hear it because it does not have the power to do so. For this reason I decided that the question of whether the Claimant had brought his claim in time ought to be considered before any other matter. It also seemed to me that it was in accordance with the overriding objective to proceed with the various issues that were to be dealt with at the hearing in this order, with the out of time

question first, to avoid the inappropriate use of time in considering other issues (such as whether the Claimant had two years' service at the time of his dismissal) only to find that the claim could not proceed because the Tribunal did not have jurisdiction to deal with it. The fact that the claim was originally accepted does not amount to a ground for the reconsideration of the decision that the claim was out of time.

6. I have considered the other matters the Claimant raises. It appears that there were a number of administrative difficulties with this file and that as a litigant in person the Claimant would have found these confusing and difficult to follow. It is unfortunate that this happened, but all of these matters occurred after the Claimant had submitted his claim and cannot therefore have any impact on the question I was dealing with, which was whether it was reasonably practicable for the claim to have been submitted in time. I have considered carefully the information the Claimant sets out about his health and the stress he was under as a result of his circumstances combined with the difficulty of managing employment tribunal litigation as an unrepresented individual. I have considered his comments about the hearing itself. I have also taken into consideration the fact that the Claimant's first language is not English. In my judgment none of these matters had any bearing on the decision I reached or mean that it would be in the interests of justice to reconsider that decision. The Claimant's case about the time limit was that he had instructed the Citizen's Advice Bureau to submit his claim to the tribunal and it had not done so. I set out in my written reasons why I was bound to find as a matter of law that this meant that it was reasonably practicable for the claim to be submitted in time (*Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53, CA and *Riley v Tesco Stores* 1980 ICR 323 CA). Nothing the Claimant has set out in his submission makes any difference to that conclusion or means that it would be in the interests of justice to reconsider it. To reinforce this point, I set out below what the Claimant said in the witness statement that was among the documents he provided in advance of the hearing:

### **30. Contacting Citizen Advice**

**30.1. As soon as I received my termination notice from the company, I contacted ACAS and spoke with a gentleman. After hearing my explanation regarding my condition during my employment, he correctly recommended that because of my complicated situation get in touch with Citizen Advice and discuss the matter with them.**

**30.2. On 13 September, I contacted Citizen Advice and provided them with the necessary documents. It was agreed that Citizen Advice would correspond with the Employment Tribunal on my behalf and proceed with the case. I maintained continuous communication with Citizen Advice Woking until 10 January and both myself and Citizen Advice's Woking were awaiting a response from an Employment Expert at Citizen Advice Head Office. [Pages 558 to 576]**

**30.3. On 10 January, a caseworker from Citizen Advice contacted me and informed me that there was a three-month deadline, which their specialist has stated we has missed. When I informed them that I have reported this claim to the Citizens Advice on time, On 24 January, they recommended that I contact ACAS for late claim registration. [page 574 and 575]**

7. This is further reinforced by the communication from the Citizen's Advice Bureau confirming that the deadline had been missed that I considered during

the hearing on 6 November 2023 and was resent by the Claimant alongside his application for reconsideration as page 34 of a small bundle of documents. That communication, which was dated 10 January 2023 reads:

**I am aware that this may not be your main priority at the moment but I wanted to update you on your previous employment situation.**

**We have had a reply from our Expert Team but unfortunately we have passed the last date by which a claim has to be reported.**

8. Even if this hearing took place all over again it is inevitable that it would lead to the same conclusion. It is clear from Rule 72(1) that an application must be refused if there is no reasonable prospect of the original decision being varied or revoked, as I find is the case in relation to this application. Accordingly the Claimant's application for reconsideration of the decision taken on 6 November 2023 is refused.

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Employment Judge Morton  
Date: 12 February 2024