



EMPLOYMENT TRIBUNALS

Claimant: Mr T Radio

Respondent: Bapp Industrial Supplies (Huddersfield) Limited

JUDGMENT ON RECONSIDERATION

The claimant's application dated 8 January 2024 for reconsideration of the Judgment sent to the parties on 6 January 2024 is refused.

REASONS

1. In a Judgment dated 30 November 2023 and sent to the parties on 6 January 2024 following a hearing on 30 November 2023 ("**the Judgment**"), the claimant's claims for unfair dismissal, holiday pay and arrears of pay failed and were dismissed.
2. On 8 and 9 January 2024 the claimant wrote to the Tribunal asking that the Tribunal reconsider its judgment. The reason given for the application was that "*my audio recording was not played in court*".
3. On 12th January the claimant wrote to the Tribunal again stating that the audio recording dated back to 22 September 2022 and was of a conversation between two employees of the respondent in which one suggested to the other that the respondent should 'get rid' of the claimant.
4. Rule 70 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("**the Rules**") provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original judgment may be confirmed, varied, or revoked.
5. Rule 71 of the Rules provides that applications for reconsideration shall be made either in the hearing itself or, in writing, within 14 days of the date on which the judgment is sent to the parties. The claimant's application for reconsideration was made in time.

6. Rule 72 of the Rules contains the process that must be followed when an application for reconsideration is made. The first stage is for the Employment Judge to consider the application and decide whether there are reasonable prospects of the judgment being varied or revoked. If the Employment Judge considers that there are no reasonable prospects of the judgment being varied or revoked, then the application shall be refused.
7. A judgment can only be reconsidered if it is in the interests of justice to do so.
8. When dealing with applications for reconsideration, the Employment Judge should take into account the following principles laid down by the higher courts:
 - a. There is an underlying public policy interest in the finality of litigation, and reconsiderations should therefore be the exception to the general rule that Employment Tribunal decisions should not be reopened and relitigated. Finality in litigation is central to the interests of justice (***Ebury Partners Ltd v Acton Davis 2023 EAT 40***);
 - b. The reconsideration process is not designed to give a disappointed party a 'second bite at the cherry'. It 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" (Lord McDonald in ***Stevenson v Golden Wonder Ltd 1977 IRLR 474***);
 - c. The Tribunal must seek to give effect to the overriding objective of dealing with cases fairly and justly, which includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense; and
 - d. The interests of both parties should be taken into account when deciding whether it is in the interests of justice to reconsider the judgment.
9. Whilst reconsideration of a judgment may be in the interests of justice where new evidence becomes available that was not available at the time of the original judgment, that will only be the case if:
 - a. The evidence could not have been obtained with reasonable diligence for use at the original hearing;
 - b. The evidence is relevant and is likely to have had a significant influence; and
 - c. The evidence is apparently credible.

(Ladd v Marshall [1954] 3 All ER 745)

10. None of those conditions apply in this case. The claimant has provided no explanation as to why the recording was not produced at the final hearing. He has not suggested, for example, that it has only recently come into his possession.
11. In addition, given the length of time that elapsed between the conversation that was recorded and the decision to dismiss the claimant, and the support shown to the claimant in the intervening period, it is unlikely that the evidence, even had it been produced at the hearing, would have had any impact on the outcome of the claim.
12. The claimant has not produced a copy of the recording so it is not possible to comment on its credibility.
13. For the above reasons, there is no reasonable prospect of the Judgment being varied or revoked, and the claimant's application for reconsideration is refused.

26 February 2024

Employment Judge Ayre