



EMPLOYMENT TRIBUNALS

Claimant: Mr G Adamure
Respondent (1): Greggs Plc
Respondent (2): Adjustopen Ltd (in Voluntary Liquidation)

JUDGMENT ON RECONSIDERATION

The claimant's application dated **14 January 2024** for reconsideration of the judgment sent to the parties on **4 January 2024** is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. In a Judgment given orally to the parties at the hearing on 9 November 2023, I found that the Claimant's claims of Race discrimination and breaches of the Agency Worker Regulations were presented out of time and it was not just and equitable to extend the time, and that the Claimant's claim of unlawful deduction from wages was in time and would continue.
2. Under Rule 70(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (The '**Rules**'), a party may apply for the Tribunal to reconsider any Judgment on the ground that it is necessary in the interests of justice for the Tribunal to do so. Under Rule 70(2) and (3), an Employment Judge must consider the application. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the Judge must refuse the application.
3. Rules 71 and 72 of the Rules provide the Tribunal with a broad discretion to determine whether reconsideration of a decision is appropriate. In [Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA Simler P](#) provided guidance to Tribunals on how to approach applications for reconsideration. Paragraphs 34 and 35 provide:

"A request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or

adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.

Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."

4. The Claimant has requested a reconsideration of this decision and has raised three grounds for this request. I have considered the three grounds and deal with each in turn.

Ground 1

5. The Claimant says that the Tribunal that will hear his unlawful deduction from wages claim will not be able to properly consider this claim where his claims relating to breaches of the Agency Worker Regulations have been dismissed. He says this is because part of his unlawful deduction from wages claim relates deductions made during the period that he was an Agency Worker, and another part of this claim is that the period during which he was an Agency Worker should be taken into account for the purposes of calculating sums that were due to him after that period. Furthermore, he says the Respondent has suggested it may not accept the Claimant was an Agency Worker at all.

Response to Ground 1

6. The Judgment that the Claimant's Agency Worker Regulation claims were out of time will not prevent the Claimant from providing evidence that is relevant and required for his unlawful deduction from wages claim which can, if required, include details of his period of time during which he was an Agency Worker, as well as how he claims this period impacts on the calculations of the sums he says are due to him. He will also be able to respond to any defence the Respondent might raise regarding his status as an Agency Worker if that is required. The Claimant's remaining unlawful deduction from wages claim will not be jeopardised.
7. This ground does not provide any basis upon which the original decision might reasonably be varied or revoked. It is not in the interests of justice to reconsider the Judgment based on this ground.

Ground 2

8. The Second Respondent did not attend the public preliminary hearing on 9 November 2023, it is a company that was placed into voluntary administration in 2020. The Claimant says the decision to dismiss his claims in relation to the Agency Worker Regulations would result in a successful outcome for the Second Respondent – the Claimant says that:

"this is flawed because Rule 21 of the Employment Tribunal was not taken into consideration regarding any threshold for loss claims attributable to the employment agency. Rule 21(2) states that "An Employment Judge shall decide whether on the available material (which may include further information which the parties are

required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone”

Response to Ground 2

9. The public preliminary hearing was listed to determine the question as to whether or not the Tribunal had jurisdiction to hear the Claimant's claims as they appeared to have been presented out of time. The Second Respondent's submissions on this issue was not required, this was a matter of jurisdiction; plainly, whether or not the Tribunal had the power to make a judgment on the Claimant's claims at all.
10. This ground does not present a reason for the original decision to be varied or revoked and it is not in the interests of justice to reconsider the Judgement based on this ground.

Ground 3

11. The Claimant says:

“As stated in my witness statement and further testified to, I only became aware of my claims after I received a copy of the AWR. Upon reading it, I felt absolutely exploited. I immediately raised the issue informally with Greggs Plc in January 2022. In order to resolve the issue amicably, I exercised patience and fully engaged with the respondents. I was put forward to the director of Adjustopen Ltd in attempt to resolve the grievance raised. In hindsight, I believe was simply a delay strategy. Thereafter, I submitted a formal grievance around November 04, 2022 but received a final report on March 24, 2023. I believe the judge did not take into full consideration these actions of the both respondents towards delaying the entire process”

Response to Ground 3

12. Whilst I did not specifically make reference in my judgment to the Claimant's assertion that in hindsight he considered the Respondents had deployed delaying tactics (the “**Delay Argument**”), I did consider it in my deliberations and it did not change my conclusions.
13. At the public preliminary hearing the Claimant had adduced a witness statement. I allowed him to give further oral evidence at the hearing and he was cross examined by Counsel for the First Respondent on his evidence. The Claimant listened to the First Respondent's submissions and was then provided with a break to allow him to consider his own submissions before he then put them to the Tribunal.
14. In the Claimant's application for Reconsideration, the Claimant has not presented any new evidence to the Tribunal which he was unable to provide at the time of his hearing. The Claimant did not present evidence to the effect that the Respondents induced or advised him not to submit his claims to the Tribunal sooner than he did or that he was prevented him from submitting his claims to the Tribunal sooner than he did.
15. The Claimant was given an opportunity to put forward his case as he pleased at his hearing and to present his submissions to the Tribunal. The Claimant's evidence was not that he was prevented from submitting his claims to the Tribunal upon learning of them in January 2022; his evidence was that he chose not to submit his claims sooner. The Claimant said he felt it would be better to be patient and to resolve his issues internally and that he trusted the First Respondent and chose to be patient.

16. I appreciate that the Claimant's argument was that in hindsight he felt the Respondents had delayed dealing with his claims internally in order to run down the clock - however, by the time the Claimant had learned about his claims in January 2022 and then brought them to the Respondent, his claims were already significantly out of time.
17. I found that the Claimant was an intelligent and capable man (paragraph 73 of my Judgment), and that in January 2022 he knew (or ought to have known) his claims were significantly out of time (paragraph 74 of my Judgment). I found that he was aware in July 2022 that his efforts to resolve his claims directly with the Respondents were unproductive (paragraph 77 of my Judgment), and throughout the period from January 2022 onwards he chose to delay submitting his claims to the Tribunal (paragraph 75 – 79 of my Judgment).
18. I found that the Claimant elected to take no action from July 2022 to 31 October 2022, after having chased the Respondent by email and having noted that he had received no response and the Respondent had not taken any actions to arrange any meetings with him to follow the matter up (paragraph 78 of the Judgment). I found in particular that the Claimant's choice to delay the submission of his claims was less and less reasonable as time passed – specifically in circumstances where he was aware he was already out of time in submitting his claim and he had recognised that his attempts to resolve his claims directly with the Respondents were not productive (paragraphs 80 of the my Judgement).
19. Accordingly, whilst I had considered the Claimant's Delay Argument in my deliberations, my conclusion was that the delay was ultimately at the Claimant's own election.
20. The Claimant's third ground for reconsideration does not disclose any basis upon which there would be a reasonable prospect of the original decision being varied or revoked and I do not consider that it would be in the interests of justice to reconsider the original decision.

Conclusion

21. In conclusion, having considered the grounds advanced by the Claimant for reconsideration, there is nothing in those grounds that could lead me to vary or revoke the original decision. It is not necessary in the interests of justice for the Judgment to be reconsidered. The application for reconsideration is refused.

Employment Judge **Newburn**

Date 26 February 2024