



EMPLOYMENT TRIBUNALS

Claimant: Miss Elmelda Mashingo

Respondent: Best Time Limited

JUDGMENT

The claimant's application dated **1 September 2023** for reconsideration of the judgment sent to the parties on **18 August 2023** is refused.

REASONS

1. The application for reconsideration is made under rule 71 of the Employment Tribunal's Rules of Procedure. The process under rule 72 is for the judge to consider the application and determine, first of all, whether they consider that there is no reasonable prospect of the original decision being varied or revoked. If the judge is of that view, the application must be refused otherwise the views of the other parties to the case must be sought.
2. Under rule 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.
3. Because the claimant did not attend at the hearing and because she indicated that the reason was that she was suffering ill health, I have determined that it is in the interests of justice to reconsider the decision taken to strike out all the claimants claims, for want of jurisdiction. A hearing is not necessary in the interests of justice. I have asked the respondent for their comments, and have reconsidered the decision made.

4. Having taken into account the information provided by the claimant and the response of the respondent, I confirm the original decision to strike out the claimants claims as they were all filed out of time and the Tribunal has no jurisdiction to hear them.
5. My reasons are as follows.
6. In approaching the application for reconsideration I have considered the cases of *Flint v Eastern Electricity Board* [1975] ICR 395 and *Outasight VB v Brown* [2015] ICR D11. The principles set out in those judgments are helpfully summarised in the more recent case of *Ministry of Justice v Burton* [2016] ICR 1128, where at paragraph 21 the Court of Appeal stated “An employment tribunal has a power to review a decision “where it is necessary in the interests of justice”: see rule 70 of the *Employment Tribunals Rules of Procedure 2013*. This was one of the grounds on which a review could be permitted in the earlier incarnation of the rules. However, as Underhill J pointed out in *Newcastle upon Tyne City Council v Marsden* [2010] ICR 743, para 17 the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (*Flint v Eastern Electricity Board* [1975] ICR 395) which militates against the discretion being exercised too readily; and in *Lindsay v Ironsides Ray & Vials* [1994] ICR 384 Mummery J held that the failure of a party’s representative to draw attention to a particular argument will not generally justify granting a review. In my judgment, these principles are particularly relevant here”
7. In this case the respondent made an application to strike out the claimants claims after a case management hearing at which the claimant had clarified her claim and confirmed that the last date of employment was the end of January 2022. This meant that her contact with ACAS was outside the primary time limit and that her claim was then filed out of time.
8. The claimant had adequate notice of the respondent’s application to strike out each of her claims as having been filed out of time. The Claimant had adequate notice of the hearing listed to hear the strike out application. She did not attend at the first hearing and the hearing was adjourned and relisted.
9. The Claimant had adequate notice of the second hearing, but indicated shortly before the hearing that she would not be attending because she was receiving medical treatment. The hearing was not adjourned, although adjournment was considered, and the hearing took place in the claimants absence.
10. The claimant had adequate time to submit any documentation or a witness statement setting out any matters she wanted the tribunal to consider in support of any argument she may make, that her claim was either brought within time or that it was not reasonably practicable for her to have brought her claims within time and that she brought them within a reasonable time thereafter.
11. Despite attending at a case management hearing and despite stating that she would provide information on more than one occasion the claimant

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failed to provide any information whatsoever in response to the respondents application to strike out her claim.

12. The additional information provided by the claimant following the strike out of her claim, and in support of her application for a reconsideration, does not provide any explanation as to why her claim, or contact with ACAS was not filed at an earlier stage within time and does not provide any information or explanation as to why it was not reasonably practicable for to her to have made contact with ACAS and then filed her claim within the statutory time limit.
13. In these circumstances and bearing in mind the need for finality of proceedings, it is not in the interests of Justice to vary or revoke the original decision. The original decision to strike out all the claimants claims is confirmed.

Employment Judge Rayner

Date 8 February 2024

JUDGMENT SENT TO THE PARTIES ON

19th February 2024

FOR THE TRIBUNAL OFFICE