



EMPLOYMENT TRIBUNALS

Claimant: Ms M Zalejska

Respondent: Cameo Consultancy (Recruitment) Limited

JUDGMENT ON RECONSIDERATION **Rules 70-73 of the Employment Tribunal Rules of Procedure 2013**

Upon the Claimant's application, made on 5 February 2024, to reconsider the remedy judgment sent to the parties on 26 January 2024, 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 26 January 2024, the parties were sent the Employment Tribunal's judgment on remedy. The parties were given oral reasons for the judgment at the remedy hearing which was held in person at Reading Employment Tribunal on 15 December 2023.
2. On 5 February 2024, the Claimant wrote to the Employment Tribunal and the Employment Appeal Tribunal appealing the remedy judgment and asking that the judgment be reconsidered.
3. On 8 February 2024, the Claimant wrote to the Employment Tribunal to ask for written reasons for the remedy judgment.
4. On 11 March 2024, the reasons for the remedy judgment were written up and thereafter sent to the parties.
5. In her application for reconsideration, the Claimant raised a number of points which will hopefully be clear once she receives the written reasons for the remedy judgment, although they were also explained when the oral reasons were given.

The relevant Rules and case law

6. 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.

7. 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’.
8. 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’.

Reasons for refusal

- 9. The Claimant's application for reconsideration is refused as there is no reasonable prospect of the judgment being revoked or varied. The Claimant's request for reconsideration is based on the fact that she considers the amount awarded for her loss of income is incorrect and the award of damages for injury to feeling is too low. The Claimant's calculations regarding her loss of income does not factor in that the Tribunal found there was an 85% chance that she would have remained working for the Respondent until 12 September 2022 and so reduced her compensation for loss of income by 15% to reflect the chance that she may not have remained in the role for the whole period. Further the Claimant has not taken into account the fact that the Tribunal deducted the amount the Claimant received in benefits over this period. If the Claimant had remained in the role, she would not have received both her income from the Respondent and the amount of universal credit which she received between June and September 2022. The Tribunal made findings in respect of her pension loss and holiday pay, and these were not overlooked.

- 10. The Tribunal awarded an amount of compensation for Injury to Feelings which they considered appropriate for the reasons given. While the Claimant's employment was terminated, it was a role she had been in for two days and it was a temporary assignment for a three month period. The Tribunal took into account the distress caused to the Claimant in reaching the decision that the appropriate level of damages for Injury to Feelings was £14,000. 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. The application to reconsider the judgment is refused as there is no reasonable prospect of the judgment being varied or revoked.

Employment Judge Annand

13 March 2024

JUDGMENT SENT TO THE PARTIES ON
20 March 2024

.....
FOR THE TRIBUNAL OFFICE