



EMPLOYMENT TRIBUNALS

Claimant: A Akhtar

Respondent: John Lewis plc

JUDGMENT

1. The claimant's application dated **12 December 2023** for reconsideration of the judgment sent to the parties on **30 November 2023** is refused.
2. The claimant's application for the costs judgment to be stayed is refused.

REASONS

INTRODUCTION

1. On 12 December 2023 the claimant made an "*application for reconsideration for the decision on costs order also including application for bias and recusal of tribunal panel*".
2. I have taken this as an application for reconsideration of the judgment of 15 November 2023 (I will call this the "costs judgment"). That judgment was a costs award against the claimant. A costs award is a "judgment" (rule 1(3)(b)(i)) and so is susceptible to the reconsideration process. The claimant's application for reconsideration was made within the appropriate time limit.
3. The claimant's application starts as a criticism of the tribunal's conduct of the hearing on 13 November 2023 (which took place in her absence – I will call this the "costs hearing") and moves on to more general criticism of the tribunal's conduct and decisions in relation to her claim.

RECONSIDERATION

4. The tribunal can reconsider a previous decision "*where it is necessary in the interests of justice*". The application is first considered under rule 72(1), where the employment judge (sitting alone) will refuse the application if "*there is no reasonable prospect of the original decision being varied or revoked*". I have concluded that there is no reasonable prospect of the costs judgment being varied or revoked, so I refuse the application. These are the reasons for that decision.

THE APPLICATION

Generally

5. As mentioned earlier, although starting with criticism of the tribunal's conduct of the costs hearing, the claimant's application encompasses many areas of concern that she has expressed before. The first task is to try to separate out what is properly considered as an application for reconsideration of the costs judgment and what is more general criticism, or criticism of other decisions made by the tribunal.

Bias

6. Not for the first time, the claimant has alleged bias on the part of the tribunal. The tribunal does not accept the allegations of bias. In those circumstances any allegations of bias must be raised by the claimant with the Employment Appeal Tribunal, and it does not form a sound basis for reconsideration of the costs judgment. The claimant already has at least one appeal which may encompass allegations of bias, and we note her intention to raise further appeal(s).

Matters prior to the costs judgment

7. Much of the claimant's application is taken up with matters arising prior to the costs hearing or the costs judgment. There is, for instance, criticism of our underlying judgment on the merits of her claim. To the extent that earlier decisions are criticised, they must be the subject of applications for reconsideration or appeals in their own right (some of which have already been made by the claimant). An application for reconsideration of the costs judgment cannot be used as a vehicle for challenging earlier findings, orders or judgments from the tribunal.

The costs hearing – proceeding in the claimant's absence

8. The conduct of the costs hearing and the subsequent costs judgment can properly be the subject of an application for reconsideration. Much of the claimant's criticism (at least in the start of her application) is on the tribunal's decision to proceed in her absence.
9. On this point the claimant's application for reconsideration does not address what seems to be quite a difficult point for her. As pointed out in para 9 of our reasons, despite any difficulties in attending the claimant had not at any point made an application for the hearing to be adjourned or postponed. The reconsideration can only succeed on the basis that the consideration of proceeding made of our own motion was wrong, not that we incorrectly decided on an application that she made.
10. In the first and part of the second page of her application she criticises our view of the events that led us to conclude that she was doing everything possible to avoid the hearing. That is essentially a dispute with our factual finding. I see nothing in the reconsideration application that could properly disturb that finding. Perhaps the only thing that is new there is that she was on a pay-as-you-go mobile phone and had run out of credit, as an explanation of not (or no longer) being able to call out to the tribunal. The claimant talks of a news article about charging phones, but this was not supplied with her application. The point remains that the problem was not with any one of the reasons the claimant gave for non-attendance, but that "*while individually they are at*

least unusual, taken together [they] become highly improbable". If we have made an error of law by proceeding in her absence that will be a matter the claimant can raise with the EAT.

The costs judgment generally

11. In the middle of the first page the claimant refers to the question of seeking legal advice. The claimant says that 13 November 2023 was not the first time she had suggested she would need legal representation. The claimant said that she had mentioned this in an application on 10 May 2023. She may be correct about that, but the point in para 13 was less that this had not been mentioned at all before and more, as is set out in the final sentence of that paragraph "*if there was any question of her instructing a legal representative that would have been as relevant for the intended CVP hearing as it would be for any in person attendance*".
12. Almost everything beyond the second page of the application is criticism of earlier decisions by the tribunal or matters raised by the claimant in support of her allegations of bias. In her final page the claimant says that "*tribunal was fully aware claimant has no means to pay*", referring back to a schedule of loss submitted in October 2022. I do not see how a schedule of loss in October 2022 can be taken as a statement or evidence of the claimant's means at a hearing in November 2023, particularly when specific provision had been made for the claimant to present evidence on that point in the second order of 6 September 2023.

Staying the costs judgment

13. At the end of her application the claimant refers to staying the costs order. I am not sure if it is within my powers to do that, but the point does not arise because I do not see any proper basis on which I should stay the costs judgment.

Final observations

14. I cannot rule out there being a proper basis for the claimant to make further applications to this tribunal, but it seems to me that now that this application has been dealt with the parties must turn their attention to the Employment Appeal Tribunal and addressing the appeals or prospective appeals brought and to be brought by the claimant there.

Employment Judge Anstis
Date: 21 December 2023

JUDGMENT SENT TO THE PARTIES ON
21 March 2024

FOR THE TRIBUNAL OFFICE