



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant:** Christian Mallon

**Respondent:** Electus Recruitment Solutions Limited

**Before:** Employment Judge Halliday

## **JUDGMENT ON APPLICATION FOR RECONSIDERATION**

The judgment of the tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

## **REASONS**

1. The claimant has applied for a reconsideration of the reserved costs judgment dated 10 December 2023 which was sent to the parties on 15 December 2023. The grounds are set out in a number of emails, summarised as follows:
  - 1.1. First email dated 15 December 2023, which refers to Rule 70 allowing "reconsideration in very limited circumstances but unaffordability being a basis" and setting out and attaching some financial information;
  - 1.2. Second email dated 15 December 2023 with further financial information and some information provided by an autism charity worker together with further medical information both generic and an

assessment post-dating the costs hearing (date assessed 4 September 2023).

- 1.3. Third email dated 15 December 2023 with better copies of financial information previously provided to the Tribunal relating to mortgage balances;
- 1.4. Fourth email dated 15 December 2023 referring to the fact that in addition to dyspraxia (the disability relied on for this claim) the claimant also suffered from ADHD and autism and evidence relating to autism was ignored. The claimant refers to an autism expert and asks that this evidence is taken into account in the reconsideration request;
- 1.5. Fifth email dated 15 December 2023 attaching details of equipment provided by DWP in 2021;
- 1.6. Sixth email dated 15 December 2023 asking for a Rule 50 hearing;
- 1.7. Seventh email dated 15 December 2023 with an AI summary of the Tribunal's cost judgment with comments;
- 1.8. Eighth email dated 15 December 2023 which referred to a number of discrimination cases;
- 1.9. First email dated 16 December 2023 referring to auxiliary aids and services;
- 1.10. Second email dated 16 December 2023 setting out a further summary of potential reasonable adjustments to policies, physical spaces, equipment, work arrangements etc.
- 1.11. Email dated 17 December 2023 summarising the challenges the claimant faces with processing and comprehending written text due to his dyspraxia, autism and ADHD;
- 1.12. First email dated 20 December 2023 setting out further financial information;
- 1.13. Second email dated 20 December 2023 providing information on autism and whistleblowing;
- 1.14. Third email dated 20n December 2023 asking for disclosure of an advert by a third party;
- 1.15. Email dated 22 December 2023 from third party's lawyers objecting to the request for an order for disclosure;

- 1.16. Email dated 22 December 2023 from the claimant in response to third party's lawyer's email;
- 1.17. Email dated 27 December 2023 attaching additional financial information;
- 1.18. Email dated 28 December 2023 setting out AI generated guidance for HR personnel on dealing with neurodiverse applicants;
- 1.19. First email dated 29 December 2023 setting out a list of questions for the Tribunal;
- 1.20. Second email dated 29 December 2023 attaching financial information;
- 1.21. Third email dated 29 December 2023 attaching financial information:
- 1.22. Fourth email dated 29 December 2023 with 38 attachments including:
  - 1.22.1. Letter from Sarah Heath (specialist consultant for autistic and neuro-diverse people);
  - 1.22.2. Copies of correspondence with the Tribunal;
  - 1.22.3. Copies of correspondence with the other side;
  - 1.22.4. Duplicates of emails already sent (referred to above);
  - 1.22.5. Documents relating to original claim;
  - 1.22.6. Various acknowledgements of job adverts;
  - 1.22.7. Information about suggested reasonable adjustments.
- 1.23. Fifth email dated 29 December 2023 with further financial information.
- 1.24. Email timed at 00:00 30 December 2023 relating primarily to auxiliary aids;
- 1.25. Second email of 30 December 2023 timed at 10:11 concerning neurodiversity in job applications: challenges and best practice;
- 1.26. Email dated 2 January 2024 with mortgage paperwork;
- 1.27. Second email dated 2 January 2024 relating to support services.

- 1.28. Further emails sent on 11 January and 20 January 2024 with additional information on the claimant's suitability for the role and the impact his conditions had on him personally.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The matters raised in the emails referred to at paragraphs 1.1 to 1.23 were therefore received within the relevant time limit.
3. Under Rule 5 the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in the Rules or in any decision, whether or not (in the case of an extension) it has expired. Given the Christmas break, the matters referred to in paragraphs 1.24 to 1.27 have also been considered.
4. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
5. The earlier case law suggests that the interests of justice ground should be construed restrictively. The Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/80 (where the applicant was seeking a review in the interests of justice under the former Rules which is analogous to a reconsideration under the current Rules) the EAT decided that the interests of justice ground of review does not mean "*that in every case where a litigant is unsuccessful, he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order*".
6. More recent case law suggests that the "interests of justice" ground should not be construed as restrictively as it was prior to the introduction of the "overriding objective" (which is now set out in Rule 2). This requires the tribunal to give effect to the overriding objective to deal with cases fairly and justly. As confirmed in Williams v Ferrosan Ltd [2004] IRLR 607 EAT, it is no longer the case that the "interests of justice" ground was only appropriate in exceptional circumstances. However, in Newcastle Upon Tyne City Council v Marsden [2010] IRLR 743, the EAT confirmed that it is incorrect to assert that the interests of justice ground need not necessarily be construed so restrictively, since the overriding objective to deal with cases justly required the application

of recognised principles. These include that there should be finality in litigation, which is in the interest of both parties.

7. The grounds relied upon by the claimant as set out at paragraphs 1.1 to 1.27 above are in summary, firstly that the cost order made against him is unaffordable, secondly that the oral evidence given on his behalf in relation to his autism by Sara Heath has not expressly been referred to in the judgment and therefore he concludes that it was not taken into account and that this should affect the decision to award costs against him; and thirdly by implication although not expressly stated, that the correct legal principles have not been applied.
8. The matters raised by the claimant in this application were considered in the light of all of the evidence presented to the tribunal before it reached its unanimous decision and as recorded in the judgment dated 10 December 2023 which relied on the findings of fact set out in the judgment of 19 September 2022.
9. In support of the contention that the cost order is unaffordable, the claimant has re-sent some financial information originally provided to the tribunal for the cost hearing in support of his application and has also provided some additional evidence of his financial situation. The claimant does not say why the evidence he has now provided could not have been provided at the cost hearing, though as set out below, this provides no basis for varying or revoking the decision.
10. At the cost hearing, the tribunal directed itself that Rule 84 allows the tribunal to have regard to the paying party's ability to pay, but that it does not have to do so. In reaching the decision in this case, the tribunal did not have regard to the claimant's ability to pay, on the basis that the financial information provided by the claimant was incomplete and his evidence as to his means was evasive and inconsistent. Although some additional financial information has been sent to the tribunal in support of this application, comprehensive disclosure has not been provided and there is nothing in the additional information provided that would lead to there being a reasonable prospect of the original decision not to take his financial means into account to be varied or revoked.
11. In relation to the level of the costs order, the original costs claimed by the respondent were £44,475.50 (and these subsequently increased). Prior to the cost hearing, the respondent asked for costs to be capped at £20,000 and the tribunal concluded that given the way litigation had been conducted by the claimant that a costs order of £18,000 for a two day hearing was appropriate. The claimant did not challenge the amount of costs claimed by the respondent in the hearing and has neither raised any grounds nor provided any evidence to support a finding that the level of the costs order should be varied or revoked.

12. In relation to the fact that the claimant asserts that the decision should be varied or revoked because the evidence of Sara Heath in relation to autism was not expressly referred to in the judgment, the following points are noted:
  - 12.1. The disability relied on by the claimant for this claim was dyspraxia;
  - 12.2. Ms Heath gave evidence at the hearing relating to autism in support of the claimant which aligned with previous evidence presented by witnesses at the hearing on 22 and 23 August 2022 about the difficulties the claimant faced in engaging both with job applications and the tribunal process.
  - 12.3. Ms Heath did not give evidence as an expert witness.
  - 12.4. The claimant also presented a psychological needs assessment (held on 17 March 2023) at the cost hearing having asked for the original listing of the hearing to be delayed so this could be obtained. This was considered by the tribunal as set out in paragraph 16 of the Judgement.
  - 12.5. A letter from Ms Heath was attached to the claimant's fourth email of 29 December 2023 in support of this application.
13. Having considered the above factors and noting that Ms Heath's oral evidence was heard and considered by the tribunal along with all the other medical evidence submitted by the claimant (both general and specific), I find that the fact that there is no express reference to her evidence in the judgment does not provide any grounds to conclude that there is a reasonable prospect, of the original decision being varied or revoked.
14. The claimant has further referred the tribunal to relevant legal principles by way both of summaries of those principles (in some cases assisted by AI) and by references to case law. Having reviewed these summaries and cases, I am satisfied that none of these raise any error of law that would lead to there being a reasonable prospect of the original decision being varied or revoked.
15. Accordingly, the application for reconsideration pursuant to Rule 72(1) is refused because there is no reasonable prospect of the judgment being varied or revoked.

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Employment Judge Halliday  
Dated 30 March 2024

Judgment sent to Parties on 19 April 2024

For the Tribunal Office

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