EMPLOYMENT TRIBUNALS

Claimant: Ms L Parkinson

Respondent: British Telecommunications plc

JUDGMENT

The claimant's application dated **29 March 2024** for reconsideration of the judgment, sent to the parties on **14 March 2024** is refused as it has no reasonable prospects of success.

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

70. Principles
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. Application
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. Process
(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. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint

another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1) requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the 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.

4. The reconsideration rules and procedure are not intended to provide an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way. They are not intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed (with or without different emphasis). Nor do they provide an opportunity to seek to present new evidence that could have been presented prior to judgment.

5. Under the current version of the rules, there is a single ground for reconsideration — namely, *"*where it is necessary in the interests of justice*".* This contrasts with the position under the 2004 rules, where there specified grounds upon which a tribunal could review a judgment.

6. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

7. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. In the new version of the rules, it had not been necessary to repeat the other specific grounds for an application because an application relying on any of those other arguments can still be made in reliance on the "interests of justice" grounds.

8. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were *exceptional* circumstances justifying reconsideration. There does, however,

have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment. As was stated in Ebury Partners Uk Limited v Mr M Acton Davis Neutral Citation Number: [2023] EAT 40

> The employment tribunal can therefore only reconsider a decision if it is necessary to do so "in the interests of justice." A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "second bite of the cherry" and the jurisdiction to reconsider should be exercised with caution.

The Claimant's application

9. The Claimant submitted an email dated **29 March 2024**, which was outside the relevant time limit, seeking reconsideration.

10. Taking account of the Claimant's disability, and of the fact that it was only 1 minute outside of the time limit, it is in the interest of justice to extend time.

11. The Claimant's first ground is insufficient time. However, the evidence and submissions were not completed any sooner than they would have had to have been completed for a 10 day hearing. The 10 day listing was to include time for the Tribunal to deliberate and give oral judgment. The loss of what would otherwise have been Day 10 meant that the Tribunal had to reserve its decision. However, submissions would not have been later than they were (which was the morning of Day 9) even if the whole of Day 10 had been available. As it was, the panel met in chambers for part of 15 December (which had been the scheduled Day 10) and all of 18 December. So the hearing took 11.5 days, even without oral judgment (which would have been a further half day). So the parties have had the equivalent of a 12 day hearing, and the argument that any part of the decision should be changed because insufficient time was allocated (even taking account of the Claimant's disabilities) has no reasonable prospect of success.

12. The Claimant's second ground is "new information". During the hearing, we made clear to both sides what we had received from them and what we would admit into evidence. We made no decision to admit anything into evidence (or to refuse to do so) without giving each side the opportunity to comment, and without giving our reasons for the decision.

13. We noted the contents of (as well as the other documents) the copy of the decision in Gheasuddin. We have referred to the documents and evidence that we thought we needed to refer to in order to explain our decisions to the parties. If the basis of this part of the application is that the decision should be changed because we overlooked relevant evidence, then there are no reasonable prospects that the panel would agree with that argument and

change its decision.

14. What the Claimant says under the heading "point 38" (ie, cross-referencing paragraph 38 of the written reasons) would provide no basis for us to change any of our decisions.

15. The Claimant's next heading is "Row 20". It is an attempt to re-argue the findings of fact. We made our findings, and set out our reasons, in the reserved judgment. We did understand that the Claimant was suggesting that age discrimination could and should be inferred, but we did not accept that argument. There is no reasonable prospect of the comments made in this section of the application causing the panel to change its mind.

16. The Claimant's next heading is "Location Strategy Point 9". This is simply repeating the exact same point that the Claimant made at the hearing and that was already fully considered.

17. The Claimant's next heading is "harassment and bullying". We referred to the evidence and arguments that we thought we needed to refer to in order to explain our decisions to the parties. If the basis of this part of the application is that the decision should be changed because we overlooked some relevant argument or evidence, then there are no reasonable prospects that the panel would agree and change its decision.

18. The Claimant's next heading is "Two Ticks" and comments on matters that were dealt with in the reserved judgment.

19. In terms of alleged bonus entitlement, we explained in the reserved judgment why the Claimant did not persuade us that there was a breach of contract. The application repeats the same argument that she made in the hearing.

20. To the extent that the Claimant argues that we should have decided that it was a breach of contract to place her on AJS, it is unclear which part of our decision she is objecting to, or which part of her pleaded case she is saying we failed to address. The reserved judgment comments in detail about AJS, and the Respondent's decision to apply it to the Claimant.

21. In terms of the heading "Breach of Contract PILON", as stated in paragraph 148 of the reserved judgment, on 22 March 2017, the Respondent gave the Claimant notice. The Respondent was not required to give her both a notice period and also a PILON. If the Claimant is seeking to allege that Ms Willis did not have authority to dismiss her, that was not one of the claims or arguments which we had to deal with. The Claimant was told she had the right to appeal, and she exercised that right.

22. In terms of expenses, we commented on the evidence presented to us in the

hearing bundle. We were aware, of course, that the documents were not originals. The Claimant did not prove to us that the Respondent was contractually obliged to make a further payment to her for expenses.

23. Paragraph 23 of the reserved decision comments on Sarah Jaji.

24. We commented on the Preston interview in our decision. We did so for completeness and because there was cross-examination about it, and because it was cross-referenced in other material. We fully understood that the Claimant's argument was that it was not appropriate for Ms Gissane to seek to persuade her to attend.

25. For the reasons stated above, having considered the Claimant's application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked, and the application is refused.

Employment Judge Quill

Date: 4 April 2024

JUDGMENT SENT TO THE PARTIES ON

25 April 2024

FOR THE TRIBUNAL OFFICE