EMPLOYMENT TRIBUNALS

Claimant: Ms S Wakil
Ms S Khan

Respondent: Education Dreams Ltd

JUDGMENT

The claimant's application dated **14 March 2024** for reconsideration of the judgment, sent to the parties on **13 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..

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 Tribunal has received a letter which signs off in the names: "Saba Wakil, Saba Khan". Throughout the letter the word "I" (rather than "we") is used.

10. It remains unclear as to whether "Saba Wakil" and "Saba Khan" are two different people, or the same person who uses both names. If it is the latter, then I am not suggesting that there is anything improper or unreasonable about that, but my letter of 24 January 2024 sought clarification, for the reasons stated in that letter in more detail.

11. The email which attached the letter came from an email address which included "wakil", not "khan". I proceed on the assumption that, if there are two different claimants' the application was from both of them, given the printed signature on the letter.

12. The covering email used the word "appeal". The letter used the word "reconsider" (as well as "appeal"). It is a valid reconsideration application submitted within the relevant time limit.

13. The application claimed that the strike out warning letter of 24 January 2024 had not been received. Therefore, without making any decisions under Rule 72(1), I ordered that that letter be re-sent and asked staff to make sure that the email addresses used included the one which had supplied the reconsideration application. That was done on 26 March 2024, together with the covering letter which included my orders that the Claimants had until 2 April 2024 to supply the information ordered in the 26 March letter and in the 24 January letter, after which time I would make a decision on the 14 March application.

14. No response to that has been received. It therefore remains the case that no substantive response to the strike out warning of 24 January has been received.

15. I have no particular reason to doubt, in all the circumstances, that the 24 January warning was properly sent to the Claimants at the addresses which they had supplied, or that they received it. However, in any event, the Claimants were given the opportunity to confirm or deny whether the email

address was correct and have supplied no further information or argument.

16. In any event, the situation now is no different to the situation on 23 February 2024 when I struck out the claims. I have received no further information to cause me to think that decision might have been wrong for any reason.

17. For the reasons stated above, having considered the Claimants' 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: 24 April 2024

JUDGMENT SENT TO THE PARTIES ON
30 April 2024
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FOR THE TRIBUNAL OFFICE