



EMPLOYMENT TRIBUNALS

Claimant: Mr B Lenton

Respondent: Clearview Glaziers Co Ltd

JUDGMENT

The respondent's application dated **19 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 Respondent’s application

9. The Claimant submitted an email dated **19 March 2024**, within the relevant time limit, seeking reconsideration.
10. On 11 December 2023, the Respondent was sent a notice of claim letter, with the standard information about how to submit a response. Amongst other things, it was sent a copy of the claim form, which included the Claimant’s email address.
11. The Respondent did not submit the response form by the required date (8 January 2024) or at all. It has sent some emails to the Tribunal, which, in breach of Rule 92, were not copied to the Claimant. The emails stated that, through “oversight” the Claimant had not been paid.
12. The emails said that the Respondent had a different opinion about what the Claimant had earned for the hours worked (£572.98 gross rather than £890.45 gross). They also asserted that, they inferred from the ET1 that the Claimant had ceased to work for them, and said why, in those circumstances, there were deductions that it would make from his wages which would fully offset the Claimant’s earnings, meaning that it owed him nothing.
13. No explanation for the failure to submit a response, or the failure to copy the Claimant in on the emails has been supplied. If the Respondent wished to have a hearing at which it could present evidence in support of some or all the points in its emails, it had every opportunity to do so.
14. Even on the Respondent’s own account, it has not supplied the Claimant with any payslip, or confirmed to him what (they say) his earnings were for the relevant period, or written to him to assert that any deductions would be made from his pay, or written to him to demand the return of any equipment.
15. For the reasons stated above, having considered the 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: 3 April 2024

JUDGMENT SENT TO THE PARTIES ON
2 May 2024

FOR THE TRIBUNAL OFFICE