EMPLOYMENT TRIBUNALS

Claimant Ms Petra Slavikova

Respondent SSG Recruitment Partnerships Ltd

JUDGMENT

The claimant's application dated 22 February 2024, for reconsideration of the oral Judgment of 14 February 2024 and written Judgment sent to the parties on 4 April 2024, is refused as there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The claimant, Ms Slavikova, wrote to the Tribunal on 22 February 2024, seeking a 'Request for annulment of the "final hearing" and monetary support'. This request followed oral judgment at the final hearing on 12-14 February 2024, dismissing her claims. In the introductory paragraph of this letter the claimant states 'Further to the final hearing which was taking place from 12th to 14th February 2024, due to my very pressing monetary situation I have decided not to wait for the written summary of those 3 days.' The claimant did not copy the respondent into the correspondence.

2. Following oral judgment, the claimant asked for written reasons. The written record of the decision together with reasons was sent to the parties on 4 April 2024.

3. Rule 70 of the Employment Tribunal Rules of Procedure 2013 empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any Judgment where it is necessary in the interests of justice to do so. Rule 71 requires that any application for reconsideration must be presented in writing within 14 days of the date on which the written record, or other written communication, of the original decision is sent to the parties, or within 14 days of the date that the written reasons are sent (if later) and shall set out why reconsideration of the original decision is necessary.

4. Strictly speaking, the claimant has not complied with this rule as she failed to copy the respondent into her correspondence. Further, the claimant may argue that a ‘request for an annulment and monetary compensation’ is not the same as a request for reconsideration. However, I have directed that the letter dated 22 February 2024, be sent to the respondent and have decided to treat the claimant’s letter as an application for reconsideration because in essence the application is an invitation for the Tribunal to revisit the case management decisions made and the evidence that was heard and reach different conclusions.

5. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals’ powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. Paragraphs 27-38 set out the legal principals which govern reconsideration applications. At paragraph 28, Her Honour Judge Eady QC, as she then was, observed the following:

> “*The test for reconsideration under the 2013 Rules is thus straightforwardly whether such reconsideration is in the interests of justice. This can be contrasted with the rather more complex system laid down by the provisions of Rules 34 to 36 of the 2004 ET Rules, which governed the review of Judgments and other decisions; in particular, Rule 34(3):*
>
> *“Subject to paragraph (4), decisions may be reviewed on the following grounds only —*
>
> *(a) the decision was wrongly made as a result of an administrative error;*
> *(b) a party did not receive notice of the proceedings leading to the decision;*
> *(c) the decision was made in the absence of a party;*
> *(d) new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known or foreseen at that time; or*
> *(e) the interests of justice require such a review.”*

6. She goes in to observe at paragraph 33,

> *“The interests of justice have thus long allowed for broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or 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.”*

7. There must be finality in litigation as confirmed by the Court of Appeal in Ministry of Justice v Burton and anor [2016] EWCA Civ 714 where Elias LJ observed,

> *"The discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electric Board [1975] ICR 395) which militates against the discretion being exercised too readily."*

8. The key consideration is that it must be in the interests of justice to reconsider a Judgment. There must be something about the case that warrants a requirement to go back and reconsider and this does not include giving an unsuccessful party the opportunity to re-argue their case simply because they are unhappy with the outcome.

9. I am satisfied the written Judgment ('the Judgment'), sent to the parties on 4 April 2024, covers in detail the efforts taken by the Tribunal during two preliminary hearings to understand the precise complaints the claimant was seeking to bring before the Tribunal; the chronology of applications made by the claimant prior to the final hearing and the outcomes; the efforts the Tribunal took to accommodate the claimant during the final hearing and the detailed reasons for dismissing her claims. I appreciate the claimant did not have sight of the Judgment when she made her application for reconsideration to the tribunal. In the circumstances, I have referenced the relevant paragraph numbers of the Judgment where appropriate, in my decision below.

10. Regarding the points raised by the claimant in her application for reconsideration:

    a) The claimant argues she was not given the information or an opportunity to fairly present her case and her evidence was not considered. I identified in the Judgement difficulties experienced by the claimant during the final hearing and the steps I took with a view to addressing any disadvantages experienced by her with a view to placing her, and as far as was practicable, on an equal footing with the respondent with reference to adjustments and her evidence (paragraphs 12 – 15 and 20). Neither party was legally represented. The claimant's oral evidence and some of her written evidence was referenced in my oral judgment and referred to in more detail in the written judgment. The claimant refers to her 'new evidence' in her application albeit she did not refer to any of this evidence when she crossed

examined the respondent (paragraph 43). I conclude there is no reasonable prospect of the decision being varied or revoked on these grounds.

b) The claimant argues that she was not made aware of the results of any independent investigation being conducted prior to the final hearing. This ground is misconceived as it is not the role of a Tribunal to carry out an independent investigation nor make enquiries into the outcome of an independent investigation carried out by a third party prior to the final hearing. The role of the Tribunal is to hear the evidence of the parties presented in accordance with case management orders, to find facts based on the evidence presented at the final hearing and to determine what claims are upheld or dismissed. I conclude there is no reasonable prospect of the decision being varied or revoked on this ground.

c) The claimant refers to her claims as being for discrimination, victimisation, whistleblowing and 'corruption' in her application. The Tribunal listed two case management hearings with a view to understanding the precise complaints the claimant was seeking to bring before the Tribunal (paragraphs 3-6 of the Judgment) and concluded the only claim was for automatic unfair dismissal contrary to s103A Employment Rights Act (ERA) 1996. The claimant sought to expand her claims on day two of the final hearing. I treated this as an amendment application and gave reasons for rejecting it (at paragraphs 18-19 of the Judgment). In summary, this was because the claimant has never adequately articulated anything but a s103A ERA 1996 claim, the balance of prejudice weighed in favour of rejecting the amendment application and it was not in accordance with Rule 2 of the Employment Tribunal Rules (overriding objective) to allow the claimant to expand her claims part way through the final hearing. For the avoidance of doubt, the only claim before the tribunal was for automatic unfair dismissal contrary to s103A ERA 1996 and not for any other claim as stated by the claimant in her application. I conclude there is no reasonable prospect of this decision being varied or revoked.

d) The claimant argues she was not on an equal footing and there was bias towards the respondent. The claimant does not set out why she believes there was 'favouritism', as she stated in her application, towards the respondent. As detailed above, the Tribunal went to considerable lengths with a view to addressing any disadvantages experienced by the claimant. I am satisfied that there was nothing in the application that would be sufficient to create any doubt about the Tribunal's impartiality in the mind of a fair minded and informed objective observer.

e) The claimant argues that her case should have been heard by three judicial office holders and been transferred to a different Tribunal. The claimant's claim was for automatic unfair dismissal contrary to s103A ERA 1996 and as such, is listed before a judge sitting alone. By a letter dated 18 September 2023, Employment Judge Quill gave reasons for rejecting the claimant's application for her case to be heard by three judicial office holders. By a letter dated 9 February 2024, Regional Employment Judge Foxwell gave reasons for rejecting the claimant's application to transfer her case, made two working days before the final hearing, to a different tribunal. These were case management decisions. Accordingly, the application for reconsideration on this ground is rejected.

f) Finally, the claimant argues she should be compensated until the final hearing. The claimant's claims before the tribunal at the final hearing were not well founded and were rejected. Accordingly, the claimant has no entitlement to compensation. I conclude there is no reasonable prospect of this decision being varied or revoked.

11. In summary, the claimant asserts that she did not have a fair hearing and asks the tribunal to reach different case management decisions about the admission of further claims and evidence, the transfer of her hearing to a different location, the number of judicial office holders hearing her case and ultimately, to reach a different conclusion and award compensation accordingly.

12. I am satisfied the claimant's application amounts to a request for her to be able to re-argue her case. The claimant was given considerable accommodation by the Tribunal both during case management hearings and at the final hearing. The interests of justice are that there must be finality in litigation except where there is a good reason for a case to be reconsidered. The fact that the claimant does not like the outcome and would like a second opportunity to present her case is not such a reason.

13. Based on the application presented to the Tribunal, there is no reasonable prospect of the decision of the Tribunal being revoked or varied. Accordingly, the application for reconsideration is refused.

Employment Judge Davey
10 May 2024

JUDGMENT SENT TO THE PARTIES ON

17 May 2024

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/