



EMPLOYMENT TRIBUNALS

Claimant: Michael Greatorex

Respondent: Ministry of Defence

Heard at: London East (on the papers) **On:** 05 September 2023

Before: Employment Judge Housego

Representation

Claimant: None – written application

Respondent: Written application

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the Respondent’s application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. At a video hearing on 25 July 2023 I dismissed the Respondent’s application to strike out the claims, and permitted the claims to proceed, deciding that it was just and equitable to do so, though filed out of time.
2. The judgment was promulgated on 25 July 2023 and sent to the parties on 10 August 2023. On 24 August 2023 (and so just in time) the Respondent applied for a reconsideration of that judgment.
3. The application is lengthy, but in short:

- 3.1. the judgment was a procedural irregularity because I should have restricted myself to considering whether the Ombudsman had accepted that there had been a service complaint;
 - 3.2. that a conclusion that the Respondent had “ignored” and “sidelined” the complaint was not open to me;
 - 3.3. that I was bound by the reasoning in my previous decision, or at least given the Respondent notice that this was in prospect;
 - 3.4. and that I was on a “frolic of my own” in rewriting my decision.
4. The relevant procedural rules are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Those relevant Rules are as follows:

RECONSIDERATION OF JUDGMENTS

Principles

70. 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.

Application

71. 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.

Process

72.—(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.

Reconsideration by the Tribunal on its own initiative

73. *Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).*

5. The application was made promptly. It appears that the Claimant has not made any observations on it (perhaps not having received it), but I do not need any response to determine this application.
6. I refuse the request for a reconsideration because, in essence, the application is to disagree with the decision.
7. I do not agree that I should have restricted myself as indicated. While the Claimant made application for me to reconsider my earlier decision to strike out the claim, it is open to a Judge to reconsider a judgment of that Judge's own volition. When I made my earlier decision I considered that the Ombudsman would determine whether or not there had been a service complaint. The Ombudsman decided that the Claimant was due an apology because the Respondent had not taken an opportunity to decide whether there was such a complaint.
8. My reason for awaiting the Ombudsman's decision was that it seemed to me preferable that the Ombudsman made the decision on this point, as this is (it seemed) a central part of the role of the Ombudsman. As the Ombudsman did not make that decision, I had to do so. In doing so, I used all the information supplied by the Ombudsman.

9. The findings of the Ombudsman are not disputed by the Respondent. It is open to me to draw inferences, or to make deductions or draw conclusions based in part on those findings. Nothing in the Ombudsman's report is a surprise to the Respondent, which accepted the report.
10. The whole point of a reconsideration is that the Judge is not bound by a previous decision. To change a decision based on new information is the exercise of an open mind. I do not see how the Respondent could have been taken by surprise (or if they were it was because they did not appreciate the situation). The whole issue was whether there was a service complaint, or not, and that was what I had to decide.
11. This was not a "frolic of my own" but to address the central issue of the Respondent's jurisdictional objection to the claim.
12. The Respondent asserts that it has been deprived of the opportunity of dealing with the Claimant's case internally, which is what the service complaint gives it. That is because they did not take the opportunity to deal with the complaint that was submitted, as the Ombudsman says.
13. The Respondent says that the Claimant could and should have done this another way. It is not for the Respondent to tell the Claimant what to do – it is the Claimant's service complaint. The Claimant had reasons for not doing what the Respondent wanted (set out in the earlier judgment).
14. The fact is that the Claimant put in a service complaint. The Respondent did not deal with it. They could have done – the Ombudsman said so (make a decision on admissibility at the least) – but did not.
15. The legislation does not say a service complaint adjudged by the Respondent to be a valid service complaint. It just requires there to have been a service complaint. There was, I decided, and so the jurisdictional hurdle was overcome.
16. Were it otherwise the Respondent could prevent someone lodging a claim by refusing to accept a service complaint, requiring that person to lodge a judicial review application or perhaps be shut out of the Employment Tribunal without recourse.
17. The just and equitable point was, to my mind, simple. The delay is entirely explicable because of the actions of the Respondent. It would not be just and equitable to allow the Respondent to benefit from the passage of time set out in the earlier judgment and in the Ombudsman's report when this was the cause of the delay in lodging the claim.

18. I conclude that my judgment was correct and that reconsideration of it at a hearing will not lead to it being altered.

19. If I have made a mistake of law, as opposed to exercising a discretion, the place for that to be addressed is the Employment Appeal Tribunal.

Employment Judge Housego
Dated: **05 September 2023**