



EMPLOYMENT TRIBUNALS

Claimant: Mr I A Chandel

Respondent: Northfield Farm Ltd

JUDGMENT

The claimant's application dated 10 January 2024 for reconsideration of the Judgment sent to the parties on 17 January, written reasons of which were sent on 21 March 2024, is refused.

REASONS

The Tribunal Rules on Reconsideration

1. Under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1:

“(Rule) 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.

...

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 Employment Appeal Tribunal has given guidance as to the nature of a request for reconsideration:
 - a) Reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to re-argue matters in a different way or adopting points previously omitted.

- b) There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule.
- c) It is not a means by which to have a second bite at the cherry, or is it intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.
- d) Tribunals have a wide discretion whether or not to order reconsideration. Where a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.

The claimant's application

- 3. The hearing of this matter took place on 10 January 2024 at which I decided to strike out the claimant's claim on the basis that it had no reasonable prospect of success. Both parties attended and neither party requested written reasons.
- 4. The claimant sent an email to the Tribunal cc the respondent on 10 January 2024 in which he asked for a reconsideration "under section 43" and set out the reasons why. He sent a further email to the Tribunal on 11 January 2024 again asking for a reconsideration of the decision and appeared to refer to the reasons as being contained in an earlier email in the thread dated 17 April 2023 as "these are the things that have been overlooked".
- 5. The respondent's representative emailed the Tribunal cc the Claimant later that day effectively stating that given the two-stage approach to reconsiderations (as set out in T W White & Sons Ltd v Ms K White UKEAT/0022/21), it had no comment to make unless the Tribunal sought its views on the substantive merits of the application.
- 6. On 17 January 2024, the Judgment was sent to the parties. Later that same day, the claimant wrote to the Tribunal cc the respondent requesting written reasons and also indicated that he wished to seek a reconsideration and to appeal.
- 7. On 24 January 2024, I instructed the Tribunal's administration to write to the claimant cc the respondent essentially acknowledging his request for a reconsideration, indicating that the written reasons would be sent in due course and directing him to renew his application for reconsideration at that stage. I was not aware of his email of 10 January 2024 at the time but in any event it does not appear from the file that the Tribunal administration implemented my instruction.
- 8. The written reasons were subsequently sent to the parties on 21 March 2024.

9. The claimant wrote a further email to the Tribunal cc respondent dated 24 March 2024 in which he repeats his application for a reconsideration and sets some further information in support of that request.

Conclusions

10. The claimant's email of 10 January 2024 sets out the reasons for the reconsideration as follows:

"For a reconsideration of the decision under section 43. Most of the things today were misinterpreted and the way put out was not in the manner (sic). It was a salary based contract. I had sent everything in writing to the courts and the respondent but seems like the only thing taken into consideration was the work environment and how unhappy I was but a lot of things and statements of witnesses were overlooked. I only decided to bring the tax avoidance, cash in hand and illegal employees hired by Leo once I was certain. Employment public disclosure bill 43 clause G and H."

11. As far as I am aware I considered all of the documents that were provided to me and nothing was overlooked.
12. The claim was essentially struck out because it did not contain and the claimant did not identify any cause of action over which the Tribunal had jurisdiction.
13. The reference to section 43 appears to be a reference to the provisions within the Employment Rights Act 1996 relating to protected disclosures.
14. I considered this matter carefully at the hearing but on the evidence before me I was unable to identify such a complaint and could not construct this from his claim without effectively taking over as his representative and putting words into his mouth.
15. The claimant's concern was about the way in which other members of staff were being treated. He did not identify any basis for a complaint falling within any of the categories under section 43B. The only issue that he did raise which was clearly in the public interest was the alleged non-payment of income tax and fraudulent claims for Social Security. However, these were not the reason for his complaints to the respondent and were only made after his employment ended.
16. The claimant's email of 11 January 2024 appears to be referring to the matters contained in an earlier email beneath it which is dated 17 April 2023. I had this email before me and indeed I used it during the hearing in order to determine what complaints the claimant was bringing.
17. The claimant's email of 26 March 2024 states as follows:

"I am still in India and it's been over 2 months . My mother is unwell and still recovering. I will be bringing along all the relevant medical certificates and itinerary to prove my absence from the country. I have read the written reasons behind courts decision.. The first preliminary hearing I missed isn't mentioned in the letter sent and the three hours I missed in the hearing hasn't been stated and what transpired or occurred were neither Cc'd or mentioned As I am unaware of the legal process and the functioning of it in cases like mine I do believe that a lot of it was misinterpreted and missing . I would request the Honourbale (sic) court to please allot me some more time in seeking help or Hiring legal representatives . I believe by promising me my salary based contract and then backing off because I spoke against the way he was running the business and the harassment claims not just faced by me

but others too were overlooked hiring illegal immigrants and people claiming benefits and paying them cash in hand is cheating the System whether it falls under employment tribunal or criminal offence is what I would like to find out and proceed against it through the right mediums and channels and not just waste the courts time . I do apologise for anything that seems rude or out of line . Thanking you

18. I have taken this email to be raising further reasons in support of his application for reconsideration. But having read it, I cannot see that it raises any matters over and above those that were already raised or could have been raised at the hearing. Indeed, it does appear from the wording that the claimant is under the misapprehension that he has some further opportunity to attend the hearing at which the matters that have already been decided will be dealt with. He also raises questions that fall outside the Tribunal's functions.
19. The claimant has referred to the failure to mention the original preliminary hearing which was set for 18 August 2023. My understanding is that this did not go ahead because the claimant was unable to attend by video link from India due to an unforeseen power cut and that Employment Judge Rice-Birchall who conducted the hearing wrote to the parties on 12 September 2023 apprising the claimant of the position. The preliminary hearing was subsequently rescheduled for 10 January 2024 and the claimant was advised if needs be of the requirement to seek confirmation of his ability to give evidence from India. I cannot see that this has any bearing of the decision that I made.
20. Having considered all of his correspondence I cannot find any grounds on which it is in the interests of justice to vary or revoke my decision. I therefore find that the application has no reasonable prospect of success.

Employment Judge Tsamados
Date: 22 May 2024