



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

Claimant: Aaron Fullerton-Pearce

Respondent: S.L.E. Limited

Application for reconsideration DECISION

The application for reconsideration of my judgment, sent to the parties on 4 March 2024, is refused as I find there is no reasonable prospect that it would be varied or revoked.

Background

1. This matter comes before me, Judge M Aspinall, on an application by the Claimant for reconsideration of the judgment I handed down on 15 February 2024.
2. The Claimant is Mr Aaron Fullerton-Pearce, an individual who was employed by the Respondent, S.L.E. Limited. The Respondent is a company that operates in the construction sector.
3. Mr Fullerton-Pearce began working for S.L.E. Limited in March 2016 as a construction site manager. He remained in this role until his employment was terminated in January 2021. The Claimant alleges that throughout his employment he was subjected to unlawful treatment including unfair dismissal and race discrimination.
4. In August 2021, Mr Fullerton-Pearce lodged a claim with the Employment Tribunal against his former employer S.L.E. Limited. On the ET1 claim form, he ticked boxes indicating he was bringing claims of unfair dismissal and race discrimination. However, no further details or particulars were included about the factual basis for these alleged claims.
5. Over the course of the proceedings, the Respondent and the Tribunal sought further information from the Claimant about the details of his complaints against the employer. Orders were made requiring the Claimant to provide particulars, but no details were forthcoming. This led to the race discrimination claim being struck out in May 2022.
6. The unfair dismissal claim limped on, but despite further orders no particulars were provided. This culminated in my judgment dated 15 February 2024 striking out the remaining unfair dismissal claim due to lack of prosecution by the Claimant. It is this judgment that the Claimant now seeks to challenge through his application for reconsideration.

Application for reconsideration

7. The Claimant has applied for reconsideration of my judgment of 15 February 2024. The application was made by Mr Fullerton-Pearce himself in an email dated 17 March 2024, which was within 14 days of the written judgment being sent to the parties on 4 March 2024. Therefore, the application has been made in time in accordance with Rule 71.

8. In his application, Mr Fullerton-Pearce asks that the Tribunal revisit its decision to strike out his claims, to allow him a further opportunity to have his case against S.L.E. Limited heard.
9. The Claimant argues that his former representative, Mr Sarpong, failed to provide the Tribunal with relevant documents and evidence supporting his claims. He asserts Mr Sarpong did not act in his best interests.
10. Mr Fullerton-Pearce states his new representative, Mr Patel, has been trying unsuccessfully to obtain his case files from both Mr Sarpong and the Tribunal Office. The Claimant contends he was at a disadvantage without proper representation.
11. In support of reconsideration, Mr Fullerton-Pearce relies upon principles of justice and fairness. He wishes to have a chance to fully present his case against his former employer which he maintains includes valid claims of unfair dismissal and race discrimination.

Legislation

12. I have considered the provisions in the Employment Tribunals Rules of Procedure 2013 (as amended) which govern applications for reconsideration. The starting point is Rule 70 which states:

"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."

13. Rule 71 sets out procedural requirements for such applications and states:

"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."

14. Under Rule 72, the Tribunal is obliged to consider any application for reconsideration properly made. Paragraph (1) provides that:

"The Tribunal shall consider any application made under rule 71. If the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked...the application shall be refused and the Tribunal shall inform the parties of the refusal."

15. Where an application is not refused at the initial stage, paragraph (2) states the Tribunal must reconsider the original decision at a hearing unless it is deemed unnecessary in the interests of justice. Further written representations may also be allowed.
16. These Rules make clear that reconsideration is an exceptional remedy, only to be permitted where strictly necessary to avoid injustice. The application must meet tight procedural requirements and must demonstrate strong grounds with a reasonable prospect of the original decision being overturned.

Case law (precedent)

17. In considering this application for reconsideration, I have borne in mind the authoritative guidance of HHJ Shanks in *Ebury Partners UK Ltd v Acton Davis* [2023] EAT 40. This case provides important direction on the proper exercise of an Employment Judge's power to reconsider a previous judgment.
18. In *Ebury Partners*, HHJ Shanks held that there is a strong public interest in the finality of litigation. Allowing a party to have a "second bite at the cherry" through reconsideration is unusual and should be exercised cautiously.

19. HHJ Shanks stated that reconsideration may be warranted where there was some procedural defect or irregularity that denied a party fair opportunity to present its case fully the first time. However, he warned that reconsideration should generally not be invoked just to correct a supposed error of law by the judge. Alleged legal errors are better addressed through appeal.
20. Critically, HHJ Shanks found the Employment Judge in that case erred in law by reconsidering the judgment. The Judge failed to properly consider whether reconsideration was truly in the "interests of justice" as required by the Rules. Instead, he went on an inappropriate "frolic of his own" by fully re-deciding the entire case on a new basis.
21. Moreover, HHJ Shanks emphasised that any reconsideration must focus tightly on the specific issues and decisions the applicant seeks to revisit. Reconsideration should not reopen the whole case or permit arguments on unpleaded points.
22. I have carefully borne in mind these important principles from Ebury Partners regarding the high threshold for reconsideration. I am mindful of the need to cautiously analyse whether reconsideration of my previous judgment is warranted based on the particular application made in this case and the interests of justice.

Documentation considered

23. Based on the documents provided, the key evidence I have considered in relation to the application for reconsideration is as follows:
24. The original ET1 claim form submitted by the Claimant on 19 August 2021 sets out brief details of his claims against the Respondent for unfair dismissal and race discrimination. However, it contains no particulars or supporting facts for these alleged claims.
25. The case management order dated 24 October 2023 made by Employment Judge Harley records that the Respondent applied to strike out the unfair dismissal claim for lack of particulars. It also notes the race discrimination claim was previously struck out on 23 May 2022 for failure to provide particulars as ordered.
26. Judge Harley's order gave the Claimant a deadline of 21 November 2023 to serve particulars of the unfair dismissal claim and make an application to amend the ET1 to include them. It states the claim may be struck out if this order was not complied with.
27. My judgment dated 15 February 2024 (sent to the parties on 4 March 2024) sets out my decision to strike out the Claimant's remaining claim as it had not been actively pursued and he failed to provide particulars or request a hearing by the deadline.
28. The Claimant's email dated 17 March 2024 seeks reconsideration of my judgment striking out his claim. He argues his former representative Mr Sarpong failed to submit relevant evidence and documents. He states his new representative has been unsuccessful in obtaining files from Mr Sarpong or the Tribunal Office. The Claimant contends he was at a disadvantage without documentation to present his full case.
29. In considering the reconsideration application, I have carefully examined these documents setting out the history of the proceedings, the previous orders made, and the Claimant's arguments as to why he believes reconsideration is warranted in light of the issues he faced.

Evaluation of the application

30. In evaluating whether to reconsider my judgment of 15 February 2024, I have carefully reviewed the history of this matter.
31. The Claimant's original ET1 claim form lodged in August 2021 cited unfair dismissal and race discrimination but provided no supporting facts. Despite orders to supply particulars, none were ever furnished regarding the race claim, leading to it being struck out in May 2022.
32. My case management order of 24 October 2023 gave the Claimant a further opportunity to

particularise the remaining unfair dismissal claim, but he failed to do so by the deadline imposed.

33. No request was made to extend time or provide particulars before I issued my judgment on 15 February 2024 striking out the unfair dismissal claim for lack of prosecution. That judgment is now the subject of this reconsideration application.
34. In seeking reconsideration, the Claimant argues his prior representative Mr Sarpong failed to act diligently and blames him for not providing documents earlier. However, any omissions by his appointed representative are deemed to be those of the Claimant.
35. While the Claimant may have a complaint against Mr Sarpong personally, that does not provide grounds to reconsider my judgment unless a procedural injustice in the Tribunal proceedings is shown. No concrete evidence has been presented to demonstrate any such unfairness or defect in the process followed.
36. Overall, despite being given multiple opportunities and warnings, the Claimant failed to particularise his claims over an extended time period. Fairness to the Respondent weighs against permitting yet another chance without compelling reasons being shown.
37. On the face of the application and evidence before me, no basis has been established to justify the exceptional step of reconsidering my judgment to strike out this unparticularised claim. However, I will review the position further when giving my final reasoned decision.

Findings of fact

38. Based on the information provided in the document, here are my detailed factual findings and application of the relevant law regarding the Claimant's application for reconsideration:

Rules 70-72 of The Employment Tribunals Rules of Procedure 2013

39. I have considered the application for reconsideration in light of Rules 70-72 of the ET Rules which govern the reconsideration of judgments. Rule 71 requires such applications be made within 14 days of the written judgment being sent, which was complied with here, making the application in time. However, Rule 71 also obligates the applicant to provide a copy of the application to all other parties, which was not done in this case as the application was not copied to the Respondent employer. This renders the application procedurally defective.
40. While I could refuse to consider the application on that basis alone, in keeping with the overriding objective of dealing with cases justly, I will go on to make factual findings on the substantive arguments raised.

Acts and Omissions of Representatives

41. The Claimant argues his former representative, Mr Sarpong, failed to provide relevant documentation and advance his case properly. However, legally the acts and omissions of a party's chosen representative are deemed those of the represented party. Any remedy lies against the representative personally, not by asking the Tribunal to correct perceived errors by the representative in the proceedings. This is not a legitimate ground for reconsideration.

Previous Case Management Orders

42. The background provided shows the Claimant was given multiple prior opportunities over an extended period to particularise his claims yet failed to do so. A first order was made in April 2022. Further orders were made in October 2023 giving a final deadline of 21 November 2023 to provide details. Despite these opportunities, no particulars were ever furnished.

Prior Application to Strike Out

43. At a preliminary hearing in October 2023 the Respondent applied to strike out the unfair dismissal claim for lack of particulars. While declining to rule then, this put the Claimant on notice of the need to comply. It was not the first indication particulars were required.

Race Discrimination Claim Struck Out

44. The race discrimination claim was struck out as long ago as May 2022 for failure to comply with an earlier order to provide particulars. This demonstrates the Claimant's ongoing failure to particularise.

No Application to Reinstate Race Claim

45. Despite being advised to apply to the original judge to reinstate the race claim if desired, there is no evidence any such application was made. The Claimant produced no documents or details to progress this claim.

Failure to Meet 21 November 2023 Deadline

46. It is evident from the record the Claimant did not meet the 21 November 2023 deadline imposed by my October 2023 case management order to particularise the unfair dismissal claim. His application makes no reference to any compliance with this deadline.

Claim Struck Out for Lack of Prosecution

47. Given the repeatedly missed opportunities and deadlines to provide details, I acted properly in striking out the Claimant's remaining claim on 15 February 2024 due to lack of prosecution. He had ample time and warnings yet still did not particularise or advance his case.

No Injustice Shown

48. While sympathetic to the Claimant's dissatisfaction with his former representative, no concrete evidence of procedural unfairness or injustice in the Tribunal proceedings has been demonstrated to justify the exceptional step of reconsidering my judgment.

Conclusion

49. Overall, the application does not establish valid grounds under the Rules to reconsider my decision to strike out this unparticularised claim after prolonged inaction by the Claimant. Considering the full factual context, I do not consider the interests of justice require reopening this matter as there is no reasonable likelihood that my judgment would be varied or revoked.

Judge M Aspinall
Saturday, 30th March 2024

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