



EMPLOYMENT TRIBUNALS

Claimant: Mr D Hughes

Respondent: (1) Costain Limited
Respondent: (2) ME Global Resources Limited

Date: 22/5/24

JUDGMENT ON RECONSIDERATION APPLICATION

In exercise of powers contained in **Rule 72 of the Employment Tribunals Rules of Procedure 2013 (ET Rules)**, the respondent's application of the 17th of April 2024 for reconsideration of the judgment sent to the parties on the 27th of March 2024, is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The claimant's lodged an ET1 on the 11/5/23 bringing complaints that he was owed notice pay, arrears of pay, and other payments. A preliminary hearing was held on the 21/2/24, to determine (amongst other matters), whether the claim was outside the jurisdiction of the Employment Tribunal. I found that the claimant was neither an employee nor worker of either respondent, and his complaints were dismissed on the grounds of lack of jurisdiction, in a reserved judgment dated 19/3/24. The claimant was ordered to pay costs in the sum of £19,889.50 to respondent 1 and £7,590.66 to respondent 2.

There is no reasonable prospect of the original decision being varied or revoked because:

2. **Rule 71 of the Employment Tribunal Rules of Procedure (2013) (ET Rules)** requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. The respondent applied for reconsideration of the judgment on the 17/4/24 by email. The claimant also submitted a further e mail dated 26/4/24, which appears to relate to the reconsideration application, which I have also considered. The application for reconsideration is therefore made 7 days out of time, however I extend the time limit by 7 days in accordance with the principles in **Leicester NHS Trust UKEAT/0223/18/DA 4th July 2019**.

3. Rule 72 (1) of the ET Rules provides:

“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. ...”

4. The application for reconsideration e mail dated 17/4/24 is titled 'reconsideration on costs order 27/3'. However, that e mail and the e mail dated 26/4/24 refer to issues relating to the claimant's employee/worker status. Accordingly, I have treated the reconsideration application as relating to both the dismissal of the claims on the grounds of lack of jurisdiction and costs orders made. No additional documents have been submitted with the 2 e mails.

5. The application appears to be made on the following grounds:

- a. The costs orders made are excessive and disproportionate;
- b. The tribunal does not have jurisdiction to make costs orders in excess of £20,000 without detailed assessment;
- c. Employment Judge Frazer in 2021 ordered the claimant to pay £7,000 costs for sending the same amount of e mails;
- d. The claimant is no longer employed and was made redundant on the 8/3/24;
- e. The order to pay costs to Costain Group should be withdrawn as if the claimant behaved unreasonably to the respondent (1), they behaved unreasonably to the claimant in withholding the tripartite agreement;
- f. The claimant did not send one e mail to ME Global Resources Limited;
- g. Mr Anthony Meadows sent 2 e mails referring to 'onboarding' which shows a job offer had been made;

- h. The case of **Casqueiro and Barclays Bank plc UKEAT/0085/12/MAA**, was incorrectly considered by me as it was struck out on appeal.
6. The tribunal hearing was the claimant's opportunity to give information, ask questions and raise issues, which he did. He had the opportunity to ask questions and advance all relevant arguments. A request for reconsideration is not an opportunity for a party to seek to re-litigate matters; it does not entitle a party who is unhappy with or disagrees with the decision to re-open issues that were determined. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can explain why the matter was not raised before. It is a fundamental requirement of litigation that there be certainty and finality.
 7. The claimant as a litigant in person was given appropriate assistance and support throughout the hearing, and the Tribunal was careful to take steps throughout to ensure that the parties were on an equal footing in pursuance of the overriding objective.
 8. I have read through the application for reconsideration in detail and I deal with each of the points made by the claimant in turn below:
 9. In relation to ground (a), I considered the guidance in **T Opalkova and Acquire Care Limited (2021) UKEAT/0056/21**, referred to in my judgment at paragraph 88, and **Dyer and Secretary of State for Employment (1983) UKEAT 183/33** referred to at paragraph 97 of my judgment. I considered **Barnsley MBC and Yerrakalva (2011) EWCA Civ 1255** at paragraph 102 of my judgment. I followed the structure and guidance set out by case law in deciding whether one or more of the threshold criteria set out in rule 76 (1) (a) or (b) were satisfied, whether to exercise my discretion to make a costs order, and as to the amounts of the order.
 10. Considering ground (b), I note this is a point of law which the claimant has referred to in his notice of appeal to the EAT dated 30/4/24. I refer to **James and Blockbuster Entertainment Limited (2006) All ER (D) 73 (Nov)**, in which Judge Ansell in the EAT stated the tribunal had the power to make a whole series of costs awards throughout the proceedings if it felt necessary, although each individual order could not exceed £10,000 (the limit then).
 11. In respect of ground (c), this is a costs order made by a different judge, in a different case, in the Employment Tribunal. Whilst I have noted in my judgment at paragraph 92, that **Hughes and Benson Viscometers Limited ET 1601595/21**, was based on similar facts to this case, I concluded that the claimant had some knowledge of law and procedure particularly in relation to employee / worker status, when considering if the threshold criteria in rule 76 (1) (a) or (b) were met. I also considered the case when determining whether it was appropriate to make costs orders, in paragraph 107 of my judgment.
 12. At paragraphs 108 and 113 of my judgment, I set out my reasons for not taking the claimants means into account in determining whether to make costs

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orders, and in what sum. This is in connection with ground (d) raised in the reconsideration. The claimant referred to being made redundant on the 8/3/24, about 2 weeks after the hearing. No evidence has been provided to support this, and I consider even if this information had been provided, it would not have changed my original decision, because I exercised my discretion not consider the claimants' means, when determining if it was appropriate to make a costs order, and in considering the amount of any costs order.

13. The claimant is referring to matters on which I made findings of fact, in respect of grounds (e), (f) and (g). It was not the claimant's position during the hearing, that he did not send any e mails to ME Global Resources Limited. At paragraph 80 I have quoted and referred to some of the e mails sent by the claimant, they were part of the bundle. In respect of e mails from Anthony Meadows and the offer of a role, I made findings at paragraphs 37 –43, and drew conclusions at paragraphs 54 – 56, that no job offer was made.
14. Ground (h) refers to the case of **Casqueiro and Barclays Bank plc UKEAT/0085/12/MAA**. This case was provided in the bundle, and as mentioned in paragraph 86 of my judgment, was referred to as an example of a case the claimant had been involved in, where he had acted as a lay representative in the EAT. I record in paragraph 107 of my judgment that the wasted costs order made was set aside and the case remitted to the Employment Tribunal for a wasted costs hearing before a different judge. I was not under a misapprehension about the case's outcome, it was referred to as an example of a case the claimant had been involved in.
15. Therefore, having considered the matters raised, I consider there is no reasonable prospect of the original decisions on lack of jurisdiction and the 2 costs orders being varied or revoked. The claimant is unhappy with the costs orders made. He seeks to challenge findings of fact that were made or the conclusions that the Tribunal reached from those findings. That part of the application is an attempt to re-litigate what was explored in detail at the hearing. The claimant has referred to a change of circumstances, in that he has been made redundant. I explained this would not have made a difference to my decision, as I did not consider the claimants' means when making cost orders.
16. I have therefore exercised my discretion to refuse the application for reconsideration as there is no reasonable prospect of the judgment being varied or revoked. The respondent's application for reconsideration is therefore rejected.

Employment Judge Beck

Date 22/5/24