EMPLOYMENT TRIBUNALS

Claimant: Ms E Truksa

Respondent: Teleperformance Limited

JUDGMENT

The claimant's application dated **9 May 2024** for reconsideration of the judgment, sent to the parties on **9 April 2024** is refused as it has no reasonable prospects of success.

REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

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.

71. Application
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.

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 Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 72(1) requires the judge to dismiss the application if the judge decides that there is no reasonable prospect of the original decision being varied or revoked. Otherwise, the application is dealt with under the remainder of Rule 72.

3. In deciding whether or not to reconsider the judgment, the tribunal has a broad discretion, which must be exercised judicially, having regard not only to the interests of the party seeking the 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.

4. The reconsideration rules and procedure are not intended to provide an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way. They are not intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed (with or without different emphasis). Nor do they provide an opportunity to seek to present new evidence that could have been presented prior to judgment.

5. Under the current version of the rules, there is a single ground for reconsideration — namely, *"*where it is necessary in the interests of justice*"*. In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. In the current version of the rules, it had not been necessary to include more specific grounds for an application because an application relying on any of those other arguments can still be made in reliance on the "interests of justice" grounds.

6. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

7. The situation remains, as it had been prior to the 2013 rules, that it is not necessary for the applicant to go as far as demonstrating that there were *exceptional* circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment. As was stated in Ebury Partners Uk Limited v Mr M Acton Davis

> The employment tribunal can therefore only reconsider a decision if it is necessary to do so "in the interests of justice." A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "second bite of the cherry" and the jurisdiction to reconsider should be exercised with caution.

The Claimant's application

8. The Claimant submitted an email dated **9 May 2024**. This was within the relevant time limit, seeking reconsideration, because written reasons were sent on 25 April 2024.

9. I was aware (based on what the Claimant had written prior to the hearing and based on what she said during the hearing) that the Claimant's opinion was that it was wrong to hold a hearing to decide whether the claim was in time, because the claim had already been accepted and sent to the Respondent.

10. I made it clear to the Claimant near to the start of the hearing that I would wish to hear evidence on oath before deciding the preliminary issue, and that, since no written statement had been prepared (no order having been made) I would be willing to listen to a postponement application which, if successful, would also mean that I would make orders for a written statement (and further evidence, if any) to be sent to the Respondent prior to the new hearing date. The Claimant and the Respondent's representative each stated that they preferred to proceed on the day, on the basis that the Claimant would give oral evidence without a prior written statement.

11. I received some documents from the parties during the hearing. I am satisfied that the Claimant knew both (i) she could apply for postponement in order to supply further evidence or (ii) she could ask permission to email documents to me during the hearing.

12. The Claimant is correct that she stated, during her oral evidence, that she had suffered from vertigo, which had made looking at bright lights difficult and that, therefore, it had been difficult to look at computer screen. I asked her when, and she stated that she had a document to show that she had been to the GP on 20 April 2023, and that the document stated that she told the GP it had commenced 8 days prior to that. She told me that it had happened "off and on" for about two and a half months. I asked her if this was the first time she had mentioned it (she agreed it was) and if she had supplied any medical evidence (and she had not). She was asked questions about this issue firstly when I was asking the Claimant questions so that she could give oral evidence-in-chief, secondly when the Respondent's representative cross-examined, and thirdly when I sought additional clarification of her evidence following cross-examination.

13. The Claimant did not state, and I did not find, that she was unable to use a computer at all between around 12 April 2023, and around 19 June 2023.

14. At the hearing, I was satisfied that there was nothing in the Claimant's claim form about events which occurred at the appeal stage, following her dismissal. In any event, the Claimant was not arguing that there was.

    14.1. One of the decisions I had to make at the hearing was whether to allow an amendment to add allegations of discrimination in connection with the appeal (and its rejection); if I granted the amendment, I would then have had to decide if I would extend time, on just and equitable grounds, for those complaints.

    14.2. Had the amendment been granted (and had I extended time for the new allegations) then, if a final hearing decided that the decision to reject the appeal was discrimination, then that would have opened up the possibility of a decision that the earlier allegations formed part of a continuing act with the rejection of the appeal.

    14.3. However, in any event, including if the amendment were to be refused, I had to make a decision about whether the complaints in the claim form were in time. Given the timings of those alleged acts and omissions, and of the start of ACAS conciliation, and of presentation of the claim form, those complaints were only in time (subject to the continuing act point mentioned in the previous sub-paragraph) if I decided that it was just and equitable to extend time to 19 June 2023.

15. For the reasons I gave I was satisfied that the Claimant had been researching her employment rights since before the end of her employment, and had continued to do so afterwards, including between the end of employment and when she lodged her appeal.

16. I took into account all of the Claimant's arguments that it would be just and equitable to extend time because (amongst other things) her failure to present the claim in time was due to either (a) not knowing about employment tribunals and/or not knowing that there were time limits for tribunal claims or (b) a belief that the time limit within which she had to contact ACAS began to run from the date of the appeal decision.

    16.1. The two arguments (not knowing that time limits existed versus believing a time limit clock ran from the appeal outcome date) are mutually exclusive in the sense that a person could not hold both beliefs at the same time. I do accept that they could be consecutive. That is, a person could, at an earlier point in time not know anything about employment tribunals, &/or about complaints that could be brought against employers, &/or about the existence of time limits for such

claims, and then, at a later point in time, having discovered those things, they could hold a mistaken belief about the actual time limit (and/or the facts that would be used to calculate the limitation date) for a claim that they wanted to bring.

16.2. An alternative argument that the person was unable to present the claim because of health reasons is not inconsistent with either of the other two.

16.2.1. It is not at all inconsistent to argue that there was ignorance of time limits, but to say that, "*even if I had known about them, I would have been too ill to claim*". On the contrary, there could be an overlap in that the health issues that rendered the person too unwell to claim were also were part of the reason for their ignorance of the time limit.

16.2.2. Similarly, there is no contradiction between the argument, I knew there was a time limit, but was wrong about the limitation date, but "*even if I had known about the correct date, I would have been too ill to present the claim as of that correct date*".

16.2.3. There is, however, a distinction between either of those two positions and the argument *"I knew the correct date, and would have put my claim in on time, but I was prevented from doing so by health reasons*". The Claimant did not put forward this argument at the hearing.

17. I took into account all the reasons which the Claimant gave for arguing that lack of knowledge of time limits meant that time should be extended, especially the fact that, on her case, she had a disability which had caused her to be too ill to attend work/training in the weeks prior to the dismissal. I also took into account her argument that, post-termination, there were other factors, including her own health issues, and that of her mother, that either meant that she had a good reason for presenting the claim late, or had other justifications for why it would be just and equitable to extend time.

18. I did not accept that the Claimant had a health issue that prevented her contacting ACAS prior to 30 April 2023.

18.1. She did, in fact, contact them on 19 May 2023. She did not put forward evidence or argument that health issues prevented her contacting ACAS by 30 April, AND evidence or argument that it had cleared up so that she could contact them on 19 May.

18.2. Similarly, she did not persuade me that there were health issues that prevented her presenting the claim form sooner, together with any evidence that such issues cleared up on or shortly before 19 June 2023.

18.3. The Claimant did not assert that she had any medical evidence, other

than the notes of visiting GP on 20 April 2023, about the condition that she described as “vertigo” and/or its effects on her between April and June 2023.

18.4. However, in any event, I am satisfied that there was no health condition preventing her phoning ACAS earlier than she did. During the hearing, she described her contact with EASS, and she also said she contacted other sources of information. When I pressed her for what the others were, she mentioned only ACAS, but was unable to give a clear explanation of how she came about the knowledge that it was necessary to contact ACAS (and commence early conciliation) before presenting a claim.

19. The Claimant was not required to persuade me that it had not been reasonably practicable to present the claim on time. The lateness of the claim form (and lateness of the start of early conciliation) and my decision that there was no good reason for this lateness was only part of my decision-making (as set out in the written reasons) that it was not just and equitable to extend time. However, the specific argument that the Claimant’s health in the period April to June (or from date of appeal to June), as well as the other reasons she put forward at the hearing, are not new arguments for why (i) there was a good reason for the claim form being presented out of time or (ii) it would be just and equitable to extend time.

20. The Claimant’s application for reconsideration is, in my judgment, simply attempting to repeat points that she already had the opportunity to argue and that were already considered.

21. For the reasons stated above, having considered the Claimant’s application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked, and the application is refused.

Employment Judge Quill

Date: 11 June 2024

JUDGMENT SENT TO THE PARTIES ON
11 June 2024

FOR THE TRIBUNAL OFFICE