EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr B Palmer	v	Cavendish Philatelic Auctions Limited

RECONSIDERATION JUDGMENT

On the papers without a hearing under Rule 72(1) Employment Tribunal Rules of Procedure 2013 ("Rules")

In exercise of powers contained in Rule 72, the respondent's application of 31 May 2024 for reconsideration of the judgment sent to the parties on 21 May 2024 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. The respondent was unsuccessful in the main hearing. By an application for reconsideration, the respondent seeks to vary the reasons for the judgment to remove the conclusions of dishonesty found against the respondent. The application makes clear that *"whilst the respondent naturally is unhappy with the findings of unfair dismissal and wrongful dismissal, it seeks to challenge the findings of dishonesty only"*.

2. This is not an application for reconsideration in respect of the decision in the trial. It is in respect of the reasons. Rule 70 gives the Tribunal the power to reconsider any judgment where it is in the interests of justice to do so. Rule 71 requires a party applying for reconsideration to do so within 14 days of receiving the judgment to which the application relates. This application is made in time.

3. Rule 72 (1) of the 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. Where an Employment Judge refuses an application following the application of Rule 72(1), then it is not necessary to hear the application at a hearing and it is not necessary for the other party to the proceedings to respond to the application. Rule 72(3) provides that the application for reconsideration should be considered in the first instance, where practicable, by the same Employment Judge who made the original decision. I am the judge who made the decision in respect of which the respondent makes this application for reconsideration.

5. Rule 70, 71 and 72 refer to reconsiderations being in respect of a 'judgment' or 'decision'. This is the outcome of the hearing, the record of which claims are won and which are lost. This is clear from Rule 61:-

> ***"61 - Decisions made at or following a hearing***
>
> *(1) where there is a hearing the Tribunal may either announce its decision in relation to any issue at the hearing or reserve it to be sent to the parties as soon as practicable in writing.*
>
> *(2) If the decision is announced at the hearing, a written record (in the form of a judgment if appropriate) shall be provided to the parties… as soon as practicable…*
>
> *(3) The written record should be signed by the Employment Judge".*

6. The 'decision' which is the subject of the rules of reconsideration is distinct from the reasons provided for the decision. This is why, in the Employment Tribunal, the 'reasons' section is separated from the 'judgment' section by a different header. The words following 'judgment' are subject to Rule 70, 71 and 72.

7. The words following the 'reasons' header on a judgment document are the reasons for the judgment, by definition, and are not always attached to a judgment. Reasons are defined and discussed in Rule 62 which also asserts that reasons are separate to 'decisions':-

> ***"62 – Reasons***
>
> *(1) The Tribunal shall give reasons for its decision on any disputed issue, whether substantive or procedural (including any decisions on an application for reconsideration or for orders for costs, preparation time or wasted costs).*
>
> *(2) In the case of a decision given in writing the reasons shall also be given in writing. In the case of a decision announced at a hearing the reasons may be given orally at the hearing or reserved to be given in writing*

later (which may, but need not, be as part of the written record of the decision). Written reasons shall be signed by the Employment Judge.

(3) [not relevant]

(4) [not relevant]

(5) In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact in made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues…"

8. It follows, from a plain reading of the relevant Rules, that an application for reconsideration can relate only to the decision of the Tribunal (ie. the outcome). An application for reconsideration of elements of the reasoning only, whether factual findings or conclusions which lead to the outcome, is misconceived. I do not have the power to vary only the reasons. For that reason, this application is dismissed because it has no reasonable prospects of success.

9. I accept that an application can be made which challenges the reasons for a decision, and in so doing it applies for the decision itself to be varied or revoked. That is not what this application requests, but for completeness I have considered whether or not the grounds for the respondent's application would affect the outcome if I had made those alternative findings in the hearing itself. This is an important exercise, because I do have the power to vary the decision (the outcome) of my own motion if I consider it is necessary in the interests of justice to do so.

10. In my judgment, even if I agreed with the respondent and removed all findings of dishonesty for the reasons set out, I would still conclude that the dismissal was not done for a potentially fair reason. The dismissal would remain unfair and wrongful, and this is perhaps why the respondent does not seek to challenge the decision itself. I do not, therefore, vary or revoke the judgment in this case of my own motion, either.

11. In addition to the points relating to dishonesty, the application seeks to re-assert some matters which were already the subject of argument in the hearing and which I have determined. Although the application was misconceived, it is important to give a reminder that reconsideration is not a route to have a second bite of the cherry and re-argue points which either have been argued already in the hearing, or ought to have been. There must be finality in litigation and it is a waste of time and cost to repeat arguments which have been considered and rejected.

12. It is perhaps unnecessary for me to confirm that I do not require the claimant to respond to the respondent's application, because I have decided it has no reasonable prospects of success under Rule 72(1).

Employment Judge Fredericks-Bowyer

3 June 2024

Sent to the parties on:

5 June 2024

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For the Tribunal Office:

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