



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

Claimant: Maria Anna Holland
Respondent: Simon Whitehead Architects Ltd
Before: Judge M Aspinall (sitting alone as an Employment Judge)

Decision

Rules 70-72 of The Employment Tribunals Rules of Procedure 2013 (as amended)

JUDGMENT having been given on 21 March 2024 and sent to the parties on 5 April 2024, an application for reconsideration of that judgment was received on 17 May 2024;

And UPON considering that application, I find that the application was out of time and there is no reasonable basis upon which I should extend that time limit. As to the merits, I find that there is no reasonable prospect that my judgment would be varied or revoked. I refuse the application for reconsideration.

Background to this case

1. This case concerns a claim brought by Ms M A Holland against her former employers, Simon Whitehead Architects Ltd and Mr Simon Whitehead.
2. Ms Holland engaged with Simon Whitehead Architects Ltd as a Project Architect from 16 August 2021 until 9 September 2021. The nature of her engagement during this period, and whether she was an employee or self-employed contractor, is in dispute between the parties.
3. Ms Holland subsequently brought claims against Simon Whitehead Architects Ltd and Mr Whitehead at the London South Employment Tribunal, which were accepted on 17 February 2022. A response refuting the claims was filed by the respondents on 29 March 2022.
4. A preliminary hearing took place before Employment Judge Macey on 2 May 2023. At this hearing, Judge Macey set down various case management directions for the preparation of the case ahead of a final hearing. These included orders for the parties to disclose documents, prepare a hearing bundle, and exchange witness statements by specific deadlines.
5. The preparation process subsequently took place over many months during 2023. This included some disclosure of documents, albeit certain documents requested by Ms Holland were not provided by the respondents.
6. I ultimately struck out Ms Holland's remaining claims on 5 April 2024. This followed an application made by the respondent, on the grounds that Ms Holland had failed to comply with case management orders and had not actively pursued her claims.
7. Ms Holland has now made a late application asking me to reconsider my judgment striking out her claims. The respondents object to this application being accepted out of time. I must now decide whether it is in interests of justice to review my earlier decision.

The application for reconsideration

8. An application requesting that I reconsider my judgment striking out her claims has been made by Ms Holland in a submission dated 16 May 2024.
9. Under Rule 71(2) of the Employment Tribunal Rules of Procedure 2013, such an application for reconsideration should be made within 14 days of the date the judgment was sent to the parties. My written judgment striking out Ms Holland's claims was sent to the parties on 5 April 2024. The application for reconsideration was therefore required to be made by 19 April 2024.
10. Ms Holland's reconsideration request was submitted to the Tribunal on 17 May 2024, almost a month later than the lawful deadline. No reasons have been provided in her application to explain the delay of around 4 weeks in bringing the request.
11. I have discretion under Rule 5 to extend time limits, including accepting late applications for reconsideration. However, I must consider whether the length of delay has been adequately explained and if accepting the application out of time would be in the interests of justice.
12. In her application, Ms Holland submits that my judgment striking out her claims was unjust. She argues that she was denied the opportunity to prepare her witness statement and obtain evidence to corroborate her claims, due to the respondents' alleged failure to disclose vital documents that she had requested.
13. Ms Holland also criticises the deadlines imposed in the case management orders, and reiterates her view that delays were caused by the respondents' conduct during the preparation process. No substantial new evidence appears to have been provided with the application.
14. The respondent has objected to the late application being accepted. I must now determine if it is appropriate, given the length and nature of the delay, to review the decision to strike out Ms Holland's claims out of time.

The law

15. The ability for an Employment Tribunal to reconsider one of its previous judgments is provided under Rule 70 of the Employment Tribunals Rules of Procedure 2013 (as amended).
16. Rule 70 provides that a Tribunal may reconsider any judgment where necessary in the interests of justice, either on its own initiative or following an application by a party. The original decision may be confirmed, varied, or revoked because of reconsideration.
17. Rule 71 sets out that, except during an ongoing hearing, a written application for reconsideration must be submitted within 14 days of the date the written judgment was sent to the parties. The application must explain why reconsideration of the original decision is necessary in the interests of justice.
18. Under Rule 72, the Tribunal is obliged to consider any reconsideration application made. The Tribunal can refuse applications with no reasonable prospect of the original decision being changed. Otherwise, it must notify the parties and seek their views on whether a hearing is required, before deciding whether to reconsider the judgment.
19. Rule 5 is also relevant, as this states the Tribunal can extend any time limits specified in the Rules, including expired deadlines. I therefore have discretion to potentially allow a late reconsideration application if the interests of justice require accepting it out of time.
20. In summary the Rules allow me to reconsider a previous judgment when it is necessary in interests of justice, either upon application from a party made within 14 days of the decision, or in exceptional cases at my own discretion outside this time limit.
21. In its letter objecting to the claimant's application for reconsideration, the respondent referred to the public interest in litigation finality, stating that reconsideration should only occur in

exceptional circumstances.

22. In *Ebury Partners UK Ltd v Mr M Acton Davis* [2023] EAT 40, HHJ Shanks set out principles relating to an Employment Tribunal's jurisdiction to reconsider its own decisions under Rule 70 of the Employment Tribunal Rules of Procedure.

23. HHJ Shanks stated at paragraph 24 that:

"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. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue."

24. At paragraph 25, HHJ Shanks held that:

"It is clear that the basis for the application for reconsideration was the contention that the EJ had decided the main contractual issue against Mr Acton Davis on a basis (namely that any entitlement to commission given by para 4e of the side letter was limited to one year) which had not been pleaded or argued for by either party."

25. HHJ Shanks concluded at paragraph 28 that:

"For those reasons I think that it was inappropriate for the judge to reconsider his original decision in response to Mr Acton Davis's application and that he made an error of law in so doing."

26. Therefore, the key principles are that reconsideration should be exercised cautiously to avoid undermining the finality of litigation. It may be appropriate where there has been a procedural unfairness, but not to correct perceived errors where the parties had a fair opportunity to present their case originally.

Evaluation of the application

27. In evaluating whether to accept Ms Holland's late request for reconsideration, I must have regard to the relevant background and chronology of this case.

28. The claims brought by Ms Holland covered allegations including unfair dismissal, discrimination, unlawful deductions from wages, and a failure to provide paid holiday. Some, but not all, of the claims were struck out at an early stage.

29. At the preliminary hearing in May 2023 before Judge Macey, various case management directions were set to prepare for a final hearing. These covered the dates for disclosure and exchange of documents, agreeing a hearing bundle, and exchanging witness statements.

30. A review of the preparation process indicates that both parties experienced difficulties meeting some of these deadlines. Ms Holland alleges she was prejudiced by the respondents' failure to disclose various requested documents. The respondents state they disclosed all relevant material during the lengthy period given to prepare.

31. Ms Holland did not ultimately provide a witness statement by the 22 January 2024 deadline, which was a factor in my decision to strike out her outstanding claims on 5 April 2024. However, she argues this was due to being unable to obtain necessary evidence from the respondents in time.

32. Having carefully considered the parties' respective positions, I do not believe any specific new evidence or arguments have been put forward in the reconsideration application to justify overturning my earlier decision. The circumstances described, regarding the parties' conduct during preparation of the case and difficulties with disclosure, were already extensively considered prior to the judgment.
33. While I have sympathy for Ms Holland's situation as an unrepresented litigant, she had over 2 years to gather evidence for her claims. I must also balance this against the respondents' objections highlighting the considerable costs incurred defending the litigation.
34. Therefore, based on my re-evaluation, I do not consider there are any compelling reasons or new evidence requiring the judgment to be reconsidered at this very late stage. The substance of Ms Holland's application has already been accounted for.

Findings

35. On the material before me, I find as fact that:
 - a. Ms Holland's application for reconsideration was submitted on 17 May 2024, almost one month after the 14-day deadline stipulated under Rule 71(2).
 - b. No explanation has been provided for this significant delay in bringing the application.
 - c. Throughout the proceedings, Ms Holland has shown a concerning lack of diligence in complying with case management directions. This includes missing the deadline to serve witness statements.
 - d. The late reconsideration request continues this pattern of lack of diligence in pursuing the matter.
 - e. Ms Holland has had over 2 years to gather evidence and prepare her case since initiating claims in February 2022.
 - f. No compelling new evidence or arguments have been advanced in the reconsideration application. The substance repeats points already raised previously and considered.
36. Applying the relevant law to these factual findings:
 - a. While I have discretion under Rule 5 to extend time limits, accepting an application so substantially out of time without good explanation would undermine the principle of finality of litigation.
 - b. Given Ms Holland's lack of diligence previously, allowing the late application would reward rather than correct any injustice.
 - c. I do not consider her difficulty obtaining disclosure provides sufficient grounds to overturn my earlier decision, given the extensive period she had to gather her own evidence.
 - d. There is no reasonable prospect of my earlier decision being revoked on the facts presented, a key threshold under Rule 72(1).
 - e. The application largely revisits arguments already considered prior to judgment. Reconsideration is not warranted merely to re-examine issues where parties already had opportunity to present their case fully.

Conclusion

37. Having carefully considered Ms Holland's late request asking me to revisit my earlier judgment striking out her claims, I have decided to refuse to reconsider my original decision.

38. The application for reconsideration was made substantially out of time, on 17 May 2024, with no reasons provided for the delay of around one month past the stipulated 14-day deadline.
39. Throughout these protracted proceedings, Ms Holland has shown a concerning lack of diligence in complying with directions or proactively pursuing her case. The late reconsideration request is a continuation of this pattern.
40. Ms Holland has not presented any compelling new evidence or arguments that were not already extensively considered prior to my original decision. The difficulty she faced obtaining disclosure from the respondents was accounted for.
41. While sympathetic to her situation as an unrepresented claimant, she had over 2 years to gather evidence for her case and I must weigh this against the respondents' legitimate expectations of, and the public interest in, finality.
42. In my judgment, accepting such a late reconsideration request in these circumstances, where no good reasons for delay have been given and no injustice really shown, would undermine that principle of finality.
43. I am not satisfied Ms Holland has demonstrated her lack of diligence in preparing her case was due solely or mainly to the respondents' conduct. Nor do I find any procedural unfairness or clear injustice arising from my original decision that warrants reconsideration.
44. I conclude there is no reasonable prospect of my earlier decision being varied or revoked on the facts presented. The application substantially repeats arguments already considered in detail at earlier stages.
45. For these reasons, in interests of justice and proportionality, I refuse to reconsider my judgment striking out Ms Holland's claims. My decision to decline this late application is intended to bring finality to these protracted proceedings.

Judge M Aspinall
25th May 2024