EMPLOYMENT TRIBUNALS

Claimant: Mr L Neagoe

Respondent: Crystal Electronics Limited (1)
Mr. Dean Port (2)

UPON THE RESPONDENTS' APPLICATION pursuant to rule 71 of the Employment Tribunals Rules of Procedure 2013 for reconsideration of the Judgment with reasons dated 29 April 2024 and sent in writing to the parties on 2 May 2024.

JUDGMENT on RECONSIDERATION APPLICATION

The respondents' reconsideration application is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons:

1. The Tribunal reserved judgment at the hearing on 11 April 2024, deliberated on 12 April 2024 and settled the judgment unanimously on 29 April 2024. A judgment with written reasons was sent to the parties on 2 May 2024 ("the Judgment") following a multi-day final hearing to determine liability in April 2024.

2. In an email dated 14 May 2024 the respondents applied for reconsideration of the Judgment. The Tribunal requested copies of the hearing file and witness statements as these had not been retained; electronic versions were received by the Tribunal on 11 June 2024.

3. Rule 70 of the Employment Tribunal Rules of Procedure 2013 empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any judgment where it is necessary in the interests of justice to do so. Under Rule 72(1), an Employment Judge may determine an application on their own and without a hearing if they consider that there is no reasonable prospect of the original decision being varied or revoked.

4. Rule 71 requires that any application for reconsideration must be presented in writing within 14 days of the date on which the written record,

or other written communication, of the original decision is sent to the parties. The Judgement was sent to the parties on 2 May 2024 and accordingly the respondents' application (14 May 2024) has been made in time.

5. I am satisfied that the interests of justice do not require that there is a hearing to determine the respondents' application for reconsideration and that I can deal with these matters fairly and justly on the strength of what is a detailed written application.

The reconsideration application

6. Turning then to the application for reconsideration, the starting point has to be the decision the Tribunal reached after the liability hearing which took place from 8 to 11 April 2024, the Tribunal then spending the entirety of 12 April 2024 in deliberation and liaising subsequently to finalise the Judgment. The decision of the Tribunal was unanimous on all points. We provided detailed written reasons for our Judgment. Should these matters be examined on appeal, it would be for the Employment Appeal Tribunal or other appellate court to say whether those reasons and our decision can stand. Any suggestion that we erred in Law is generally a matter for appeal; there seems to be an oblique suggestion in relation to the application by the Tribunal of the test as to whether the claimant is disabled, although it is not clear from the application whether an error of law is the point made - Ebury Partners UK Ltd v Acton Davis [2023] EAT 40. Incorrect application of an legal test is a matter for appeal, not for reconsideration.

7. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals' powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. At paragraphs 27 – 38 of her Judgment Her Honour Judge Eady QC, as she then was, set out the legal principles which govern reconsideration applications, and observed,

> *"The interests of justice have thus long allowed for broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or 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."*

These principles were affirmed by His Honour Judge Shanks in Ebury Partners.

8. Similarly, should the Judgment be examined on appeal, it will be for the Employment Appeal Tribunal or other appellate court to say whether the Tribunal's findings, analysis and conclusions ("the Reasons") and the resulting Judgment can stand. Any suggestion that our findings or conclusions were perverse is generally a matter for appeal rather than reconsideration.

9. In Outasight, the Employment Appeal Tribunal was referred to the EAT's Judgment in Redding v EMI Leisure Ltd. EAT/262/81 in which the EAT had observed:

> *"…When you boil down what is said on* [the Claimant's] *behalf, it really comes to this: that she did not do herself justice at the hearing so justice requires that there should be a second hearing so that she may. Now, "justice" means justice to both parties. It is not said, and, as we see, cannot be said that any conduct of the case by the employers here caused [the Claimant] not to do herself justice. It was, we are afraid, her own experience in the situation…"*

10. The respondents do not say in their application for reconsideration that they feel they did not do themselves justice on 29 June 2022, but if it is the case then it is not for want of being afforded a reasonable opportunity to state their position. The Tribunal had the benefit of witness statement from 4 witnesses of the respondents, all of whom gave sworn evidence at the hearing; they were cross examined by the claimant, the Tribunal had the opportunity to ask them questions, and did so, and their representative was afforded the opportunity to re-examine them.

11. The overall impression given by the application is that the respondents are dissatisfied with the Tribunal's decision, in particular our unanimous findings of fact, and are seeking a 'second bite of the cherry'. The respondents' interests are not the only consideration here. Justice has to be done to both parties and there are broader policy considerations including the need for finality in litigation. Litigation has to be kept within sensible bounds. The respondents were afforded a reasonable opportunity to make representations in response to the claimant's complaints, their representative doing so in closing submissions, while having the benefit of being involved in and present at some of the meetings about which the claimant complained. .

12. Indeed, the challenges made by the respondents in the request for reconsideration seek to re-assert the case made by the respondents at the hearing, where the Tribunal has not accepted the respondents' version of events. The Tribunal has provided a reasoned explanation in its written reasons as to why the Tribunal has not accepted what the respondents allege happened. That the respondents do not agree with the Tribunals findings of fact is not a reason for a Tribunal to reconsider its decision. In my judgment, it is not necessary in the interests of justice that the respondents should be afforded an opportunity to revisit the evidence; the fact the Tribunal disagreed with the respondents version of events is not a ground for reconsideration.

13. For example, the Tribunal has not accepted the respondents' position that there was an investigation meeting. As explained in the reasons, the Tribunal made a finding of fact that a written record of a meeting which took place labelled in the notes of that meeting as an investigation meeting was not, in fact, an investigation meeting in substance, the Tribunal having examined at length the evidence before it from both parties (written and oral) about the discussions which took place at that meeting. The substance of the meeting informed the Tribunal's conclusion that, while

the meeting record provided by the respondents labelled the meeting as an investigation meeting, the content of that meeting was not. That a party disagrees with a finding of fact made and reasoned by a Tribunal is not a basis for reconsideration. Based on this finding of fact, the Tribunal's conclusion that the procedure was unfair for lack of an investigation meeting is reasoned and sound.

14. Time limits: whether to extend time limits in a claim of discrimination is within the discretion of the Tribunal. The respondents are referred to the reasons in the Judgment for the Tribunal's decision to extend the time limit. As stated above, a reconsideration is not a "second bite of the cherry"; it is fair and just that one party is not afforded a second opportunity to succeed with its case because it disagrees with the discretion exercised by the Tribunal unanimously.

15. Accordingly, in my judgement, the respondents have no reasonable prospect of persuading the Tribunal that it is necessary in the interests of justice for them to be afforded a second opportunity to put their case.

16. For these reasons, the respondents' application for reconsideration of the Judgment has no reasonable prospect of success and is refused.

Employment Judge Hutchings

Dated: 27 June 2024

Judgment sent to the parties on
2 July 2024

For the Tribunal office