EMPLOYMENT TRIBUNALS

Claimant: Mr A Mostafazadeh

Respondent: South Eastern Interiors Ltd

JUDGMENT

The Respondent's application – received **22 April 2024 -** for reconsideration of the judgment, sent to the parties on **16 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*".* This contrasts with the position under the 2004 rules, where there specified grounds upon which a tribunal could review a judgment.

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. In <u>Outasight VB Ltd v Brown 2015 ICR D11,</u> 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 new version of the rules, it had not been necessary to repeat the other 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.

8. 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 Neutral Citation Number: [2023] EAT 40

> 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.

9. Rule 20 reads as follows:

> **20.— Applications for extension of time for presenting response**
> (1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.
> (2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.
> (3) An Employment Judge may determine the application without a hearing.
> (4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside.

The Respondent's application

10. The Respondent submitted two copies of an identical letter, within the relevant time limit, which were both received on 22 April 2024.

11. In my assessment, the letter is not an application under Rule 20. It paraphrases (reasonably accurately) the effects of Rule 21. It does not suggest that Rule 21 was inapplicable; that is, it does not argue that a response had actually been submitted (whether rejected or otherwise). Nor does it give any explanation for failure to submit a response, nor request time for that to be done. It does not attach any draft response document.

12. The letter does not state that it has been copied to the Claimant. Rules 20, 71 and 92 each require that to be done. However, my rejection of the application is based on its substantive merits rather than the failure to comply with the rules.

13. In this case, the claim form gave the Respondent's address as 29B Hall Mark Trading Estate Wembley HA9 0LB. The Notice of Claim was sent to that address on 17 April 2023. There was no reply.

14. On 20 October 2023, a "re-sending of claim" letter was sent to Unit 37 Fourth Way Wembley HA9 0LB. This was (and still is) the registered office address

for Company number **06313194** according to Companies House. That number is the same company number that appears on the Respondent's April 2024 letter. The company address given on that letter is 29B Hall Mark Trading Estate Wembley HA9 0LB.

15. The re-sending of claim letter was also copied to 29B Hall Mark Trading Estate Wembley HA9 0LB.

16. The same date (20 October 2023) a "no response received" letter was sent to the registered office, informing the company that judgment might now be entered.

17. Also on 20 October 2023, a letter was sent to the Claimant, copied to the Respondent, which asked for evidence which to be supplied which (as stated in the letter) could avoid the need for a hearing. There was other correspondence, including a strike out warning to the Claimant which was sent to both addresses (19 January 2024)

18. In due course, the Claimant supplied the required evidence. My decision, having reviewed the evidence, was that no hearing was necessary, and I issued the judgment on both liability and remedy.

19. The only argument(s) raised in the letter are that no notice of hearing had been sent (and that, had it been, the Respondent would have attended the hearing and supplied evidence).

20. There was no need for a notice of hearing, because there was no hearing. Rule 21 does not require a hearing.

21. Had there been a hearing, the Respondent would have been entitled to notice of it. The Respondent might have been allowed to present evidence at the hearing, or it might not. That would have been a decision for the judge conducting the hearing. However, as mentioned, there was no hearing, and therefore the issue of whether the Respondent could participate in the hearing did not arise.

22. I am satisfied that the Respondent was aware of the claim, of its failure to respond, and of the risk of a Rule 21 judgment being entered (without a hearing). Amongst other things, the judgment was sent by post to the registered office address and, within a few days, the Respondent sent a letter back to the Tribunal (including a copy of the judgment and covering letter) seeking reconsideration.

23. I am satisfied that the Respondent was not prevented from providing submissions or evidence to the Tribunal, and its rights to a fair disposal have not been breached. As well as having the opportunity to reply to either the

original Notice of Claim letter, or the re-send letter, it had the opportunity to comment when it saw copies of letters to the Claimant inviting him to supply evidence which could lead to a decision without a hearing.

24. For the reasons stated above, having considered the 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: 4 July 2024

JUDGMENT SENT TO THE PARTIES ON
16 July 2024
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FOR THE TRIBUNAL OFFICE