



EMPLOYMENT TRIBUNALS

Claimant: Mr E McHenry

Respondent: Kingfisher Country Club Ltd

RECONSIDERATION JUDGMENT

The Claimant's application of 6 March 2024 for reconsideration of the judgment sent to the parties on 5 March 2024 is refused.

REASONS

1. The background to this matter is set out in the judgment sent to the parties on 5 March 2024 in respect of a hearing which took place on Friday 16 February 2024.
2. On Monday 19 February 2024 the Claimant sent the following email:

'Dear Terence I received your phone call voice message however was driving at the time.

Since last august directions hearing I believe I complied with the instructions the court ordered, however the original respondents didn't and I notified the tribunal of this! As I received notification that their solicitors had been removed I had not any further communication from the hotel in question and as a result wrongly assumed I was now the only respondent (I didn't either receive a copy of their request sent to you which you rejected).

When I reviewed the email stating the remedy hearing was being heard with "the respondent" being allowed to participate I wrongly assumed this was myself as I assumed the hotel was simply refusing to comply with orders as they have done for past 3 years!

Please can you inform me as to what has happened, my appeal rights if I feel I need to."

3. On 20 February 2024 the Claimant was informed that since he had not attended the hearing the case had been decided on the papers and he would receive the judgment and reasons in due course, following which it would be up to him to

decide what steps, if any, to take.

4. On 5 March 2024 the Claimant was sent a copy of the judgment.
5. On 6 March 2024 the Claimant sent a further email stating:

“This is the most ridiculous decision I’ve seen.

All this tribunal has done is give green light to employers that simply ignore tribunals orders and you’ll get away with everything you owe!!! 3 years I’ve been waiting for money owed and the tribunal has ignored this and not even dealt with the fact that the respondents have refused to comply with orders given!!

I will be appealing but I am entitled to a copy of the correspondence the respondents sent to postpone the last hearing!!”

6. On 8 May 2024 the Claimant sent a further email stating:

“This is a complaint regarding my claim, it has taken 3 years and still nothing was done by the tribunal despite the respondents ignoring the courts orders and breaching my STATUTORY rights you refused to comply with the law and my rights and dismissed the claim completely despite the respondent’s actions?

My questions want answered are

Why did the tribunal refuse to deal with breaches of STATUTORY rights?

Why did the tribunal take against the respondents for refusing to comply with the orders given?

Was I discriminated against (because it feels that way)

Why the tribunal ignored my correspondence?

As an employee did I have legal rights and is my employer obliged to comply if so why did the tribunal ignore these issues?

I am now forced to take legal action via the county court route after 3 long years because the employment tribunal has ignored and discriminated against myself”.

7. On 6 June 2024 the Claimant sent a further email:

“It’s been over a month since a formal complaint was made and no reply!!!”

8. The matter was referred to me on 25 July 2024 and the necessary email correspondence provided on 26 July 2024. This judgment was written and sent to the Watford administration on 1 August 2024.
9. I am treating the Claimant’s email of 6 March 2024, together with his other emails, as an application for reconsideration pursuant to rules 71 and 72 of the Employment Tribunals Rules of Procedure 2013.
10. Although hard to understand, the basis of the Claimant’s application appears to be that when he received the judgment of 11 December 2023 striking out the response and stating that the Respondent would only be entitled to participate in any hearing to the extent permitted by the Employment Judge, he thought the judgment was referring to him. Further that although he received a voice mail from the clerk on Friday 16 February 2024 he was driving so could not respond.

11. For the reasons set out in paragraphs 29-31 of the judgment promulgated on 5 March 2024 I do not consider the Claimant can reasonably have believed his claim had been struck out and that he was not allowed to take part in the hearing. In particular, as pointed out at paragraph 30 of that judgment, the Claimant had plainly understood that his claim had not been struck out and that he was entitled to participate in the hearing because he requested the hearing listed for 15 January 2024 to be adjourned and re-listed (which it was). Further and in any event, the judgment of 11 December 2023 did not even say the Respondent (whose response had been struck out) could not participate in the hearing but only that it would be entitled to participate in any hearing to the extent permitted by the Employment Judge.
12. I therefore do not consider that the Claimant has shown any good reason for his failure to attend the hearing on 16 February 2024. In addition, the Claimant gives no reason why he did not respond to the voice mail from the clerk, which he says he received on the morning of the hearing, until the following Monday morning, rather than finding somewhere to park and calling the Tribunal back at the soonest possible opportunity. In circumstances where the hearing on 16 February 2024 was the eighth listed hearing in the case, three of which had been postponed at the Claimant's request and two of which he had previously failed to attend, it was incumbent on him to explain at the earliest possible opportunity his further non-attendance and rectify the situation if at all possible.
13. As regards to the other points made, it is unclear why the Claimant complains that the Tribunal "took against" the Respondent for failing to comply with orders, but the Tribunal was entitled to strike out the response for failure to comply with Tribunal orders and this did not prejudice the Claimant. For the avoidance of doubt the Tribunal refused the Respondent's application to adjourn the hearing on 16 February 2024.
14. The alleged breaches of the Claimant's statutory rights were assessed and determined on the evidence contained in the papers.
15. The Claimant's race and/or sex played no part in the Tribunal's approach to the Claimant's non-attendance or its judgment.
16. In these circumstances there is no reasonable prospect of the Tribunal's decision being varied or revoked and the application for reconsideration is refused.

Employment Judge **Moore**
Date: 1 August 2024

JUDGMENT SENT TO THE PARTIES ON
9 August 2024

For the Tribunal