



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Ball

v

Hall Farm Services Ltd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The Respondent's application dated 26 March 2024 for reconsideration of the judgment dated 15 November 2023 ("the Judgment") is allowed. It is necessary in the interests of justice to do so.
2. The Judgment is revoked under Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules").

REASONS

1. By rule 70 of Schedule 1 to the ET Rules, the Employment Tribunal may reconsider a judgment where it is necessary in the interests of justice to do so. On reconsideration, the judgment may be confirmed, varied or revoked.
2. An application for reconsideration shall be presented in writing (and copied to all other parties) within 14 days of the date upon which the written record of the original decision was sent to the parties. This application was not in in time.
3. Under Rule 5 of the ET Rules, the Tribunal may, on its own initiative, or on the application of a party, extend any time limit in the Rules or in any decision.
4. The Respondent's application states that it was first made aware of the Judgment on 19 March 2024, took immediate legal advice and applied for a reconsideration on 26 March 2024. The Respondent's Director states that the company was completely unaware of the Judgment before that date. It is noted that, based on the Respondent's application, the reconsideration application was made within 7 days of the company becoming aware of the enforcement action on the Judgment. The Respondent has supplied the Notice of Enforcement dated 19 March 2024 and it supports its position on the dating of the enforcement action and the date they became aware of the Judgment. Therefore, although the application for a reconsideration is out of time, the time limit for the reconsideration application is extended under Rule 5 of the ET Rules. The application is admitted for consideration.

5. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration is appropriate in the circumstances. Discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also 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.
6. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the judgment being varied or revoked. This is a reviewing function in which the Judge must consider whether there is a reasonable prospect of the original decision being varied or revoked (rule 72).
7. If the Judge considers that there is no such reasonable prospect, then the application shall be refused. Otherwise, the Judge shall send a notice to the parties setting a time limit for any response to the application by the other party and seeking the views of the parties on whether the application can be determined without a hearing (rule 72).
8. My role, on considering the application upon the papers initially, is therefore to operate as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be the subject of a reconsideration hearing. I did not refuse the initial application. On 3 June 2024, I directed HMCTS to seek the views of the parties and requested a response by 17 June 2024. The Claimant requested an extension of time to respond to the direction. By the time the Claimant's request for an extension of time was referred to me, the deadline had already passed by a period of 6 weeks. I refused the further extension of time because the Claimant had 8 weeks to consider the application and make any representations. None had been received.
9. On 1 August 2024, I directed that HMCTS write to the parties to provide my response that the application did not require a hearing but that both parties should be given the opportunity to make further written representations on the application. No response has been received from either party.
10. I have proceeded to consider the reconsideration application on the papers and without a hearing.
11. The reconsideration application is not based on a disagreement of the facts of the Judgment. It is based on the fact that the Respondent's Director provided a sick note and email to the Tribunal dated 14 November 2023 requesting a postponement of the hearing based on his sickness. This postponement application was not provided to the Employment Tribunal and the Judgment hearing proceeded without the Respondent Director's attendance and with no consideration of the postponement application. The Respondent wished to attend the hearing. If the postponement application had been before me at the hearing, I would have been more likely than not to postpone the hearing in the interests of justice and based on the exceptional circumstances of the sickness of the Respondent's Director. There was evidence presented to the Employment Tribunal that was not before me as the Judge hearing the case with respect to the postponement

application. There had been no previous postponements of the case. I have further considered Rule 2 of the ET Rules to determine this application for reconsideration. I have noted the Respondent's additional application that the company had responded to the claim form by providing its response form to the ET by post and email on 12/04/2023. This would have been dealt with at the hearing on 15 November 2023 and a decision made on the extent to which the Respondent would be able to take part in the hearing.

12. Taking all of these issues into account, it is necessary in the interests of justice to reconsider the Judgment. The Respondent's application for reconsideration is allowed and the Judgment is revoked.

District Tribunal Judge A Shields
(sitting as an Employment Judge)

Date: 23 August 2024

Judgment sent to the parties on

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For the Tribunal