EMPLOYMENT TRIBUNALS

Claimant: **Ms I Rudzate**

Respondent: **Grove WP Limited**

JUDGMENT ON RECONSIDERATION

Rules 70-73 of the Employment Tribunal Rules of Procedure 2013

Upon the Claimant's application, made on 19 July 2024, to reconsider the judgment striking out the Claimant's claims, which was sent to the parties on 8 July 2024, under Rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing, the application for reconsideration is refused as there is no reasonable prospect of the judgment being revoked or varied.

REASONS

Introduction

1. On 8 July 2024, the parties were sent the Employment Tribunal's judgment regarding the Respondent's application to strike out the Claimant's remaining claims. The judgment set out that the Claimant's remaining claims were struck out.

2. On 19 July 2024, the Claimant applied for reconsideration. Unfortunately, the application for reconsideration was only sent to me in early September 2024. I apologise to the parties for the delay.

The relevant Rules and case law

3. Rules 70 to 73 of the Employment Tribunals Rules of Procedure, which are contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 SI 2013/1237, set out the procedure for tribunals to reconsider judgments:

   "70. 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. 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. - (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.

4. In *Outasight VB Ltd v Brown* [2015] ICR D11, EAT, Her Honour Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion 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'.

5. In *Stevenson v Golden Wonder Ltd* [1977] IRLR 474, EAT, Lord McDonald said (regarding the review provisions under an earlier version of the rules) that they were 'not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before'.

Reasons for refusal

6. The Claimant's application for reconsideration is refused as there is no reasonable prospect of the judgment being revoked or varied.

7. The Claimant raised a number of points in her application for reconsideration:

   a) The Claimant says the Respondent committed perjury and the evidence presented by the Respondent was misleading and false.
   b) The Claimant asks me to consider reinstating claims struck out by Employment Judge Gumbiti-Zimuto in October 2023.

c) The Claimant asks why the Respondent referred to the judgment striking out her previous claim against SB Security Solutions Ltd when the case remains unresolved. She says she has sought reconsideration of Employment Judge Abbott's judgment of November 2021 and has not received a reply. She also says she has appealed the decision to the Employment Appeal Tribunal and has not had a response.
d) The Claimant also says that in the strike out judgment, sent to the parties on 8 July 2024, I commented that how she had conducted the proceedings against SB Security Solutions Ltd was irrelevant and so she has queried why I raised it all.
e) The Claimant claims the Respondent gave a false statement when it said, "the Claimant had failed to provide any disclosure relating to mitigation". She noted, "The Claimant would like to receive a detailed report of dates and e-mails confirming their intention of mitigation as to the Claimant's knowledge, there is no such email(s)."
f) The Claimant indicates that the Respondent was wrong to suggest the Claimant had not applied to give evidence by CVP or to have the hearing heard by CVP. Mr Dhliwayo wrote to the Tribunal on 21 February 2024 noting the Claimant "will participate in the final hearing via video".
g) The Claimant makes a complaint that it was unreasonable to send "a bundle of documents during the hearing and make judgement based on newly received documents without giving a chance for the Claimant to read them in first place as it was witnessed during the hearing held on 23 May 2024."
a) The Claimant raises her concern that she does not understand the legal reason for the Respondent insisting on her presence at the hearing. She states it is a simple case and she does not need to attend, as everything she wanted to say is in her Particulars of Claim and the additional evidence supplied in the hearing.
b) The Claimant requests the Tribunal order specific disclosure for the CCTV relevant to her claims and makes some observations on the merits.
c) The Claimant comments that she was perplexed about the Respondent and the Tribunal's persistence to obtain the Claimant's medical records.
d) The Claimant notes she was not responsible for Mr Dhliwayo's actions, and she had sought a no-win-no-fee solicitor but had not been able to find one.
e) The Claimant denies having misled the Tribunal and notes the Tribunal had not taken into account the fact she could not afford to travel to and stay in the UK for the hearing. She refers to her case being dismissed because of her financial struggles to pay for tickets and accommodation to attend the hearing.

8. I have concluded that there is no reasonable prospect of the strike out judgment, of 8 July 2024, being revoked or varied. Some of the Claimant's submissions appear to be based on a misunderstanding of the Tribunal's judgment and some of her submissions relate to points that she could have made at the preliminary hearing but did not. Furthermore, some of her submissions relate to issues that cannot be determined as a part of her application for reconsideration.

9. At the start of her application, the Claimant says the Respondent committed perjury and the evidence presented by the Respondent was misleading and

false. The Claimant has not specified how she says the Respondent committed perjury or what evidence was false. In any event, I was presented with various documents from the Respondent's solicitor which contained some of the parties' correspondence, various additional emails from the Respondent's witnesses, and the judgment of Employment Judge Abbott in London South. I heard submissions from both sides, but no one gave oral evidence, and I was not provided with any witness statements.

10. It may be that the Claimant's allegation that the evidence the Respondent presented was misleading and false relates to two of the criticisms contained in her reconsideration application. Firstly, the Claimant claims the Respondent gave a false statement when it said, "the Claimant had failed to provide any disclosure relating to mitigation". She noted, "The Claimant would like to receive a detailed report of dates and e-mails confirming their intention of mitigation as to the Claimant's knowledge, there is no such email(s)." Secondly, the Claimant indicates that the Respondent was wrong to suggest the Claimant had not applied to give evidence by CVP or to have the hearing heard by CVP, when Mr Dhilwayo wrote to the Tribunal on 21 February 2024 noting the Claimant "will participate in the final hearing via video".

11. In respect of the first point, in the documents I was provided with by the Respondent's solicitor was a copy of a letter sent by Mr O'Neill to the Tribunal on 12 February 2024, requesting a strike out on the basis that proceedings were being conducted unreasonably. The letter was also sent to the Claimant's representative at that time, Mr Dhliwayo, and the letter contained references to email correspondence between Mr O'Neill and Mr Dhliwayo. In this correspondence were requests from Mr O'Neill to Mr Dhliwayo regarding disclosure relating to mitigation. This suggests requests for disclosure relating to mitigation were made to the Claimant's representative. In any event, my decision to strike out the Claimant's claim was not based on the Claimant's failure to provide disclosure related to mitigation. The Respondent's submissions regarding the Claimant's alleged failure to provide disclosure relating to mitigation did not influence my decision to strike out the Claimant's remaining claims.

12. In respect of the second point, when Mr Dhliwayo wrote to the Tribunal on 21 February 2024 noting the Claimant "will participate in the final hearing via video", the Claimant had not been given permission by the Tribunal to either give evidence by CVP or from abroad. The hearing was listed 'in person', which means it is expected the parties will attend the hearing in person to give evidence. If the Claimant wished to give evidence by video and from abroad, her representative was required to seek the Tribunal's permission by making an application. It cannot be said Mr Dhliwayo made an application for the Tribunal to allow the Claimant to give evidence by video or to have the hearing converted to a CVP hearing, when he simply stated in a pre-hearing checklist that the Claimant "will participate in the final hearing via video". In any event, Mr Dhliwayo did subsequently make an application on 1 March 2024, and it was rejected by Employment Judge Quill on 8 March 2024 as it was made too close to the final hearing, was unsupported by evidence and there was no explanation as to why it was not made sooner.

13. In her reconsideration application, the Claimant is critical of the Respondent referring to the "unresolved case" she had previously brought against SB Security Solutions Ltd. She also did not understand why the case was referred to in my judgment on strike out when I indicated it was not relevant. As noted in my judgment on strike out, I did not take into account the Claimant's conduct during the proceedings against SB Security Solutions Ltd, as detailed in Employment Judge Abbott's judgment, when I was deciding the first stage of the test i.e. when I was considering whether she had acted unreasonably in the manner she had conducted the proceedings *against the Respondent*. However, I did take into account what was recorded about her conduct in Employment Judge Abbott's judgment when considering the second stage of the test, which required me to consider if I should exercise my discretion to strike out the remaining claims. I consider this was appropriate, for the reasons I gave in my strike out judgment, regardless of whether an appeal or reconsideration application in respect of Employment Judge Abbott's judgment is still outstanding (although it would seem unlikely that either are still outstanding three years later). It is the facts that are recorded in Employment Judge Abbott's judgment about the Claimant's conduct that was important, and not Employment Judge Abbott's decision to strike out the claims.

14. The Claimant complains that it was unreasonable to send "a bundle of documents during the hearing and make judgement based on newly received documents without giving a chance for the Claimant to read them in first place as it was witnessed during the hearing held on 23 May 2024." I believe this is a reference to the fact that Mr O'Neill requested in a number of emails or documents sent to the Tribunal before the hearing that the judge conducting the preliminary hearing have access to the final hearing bundle and witness statements which had been uploaded to the Document Upload Centre some months previously. I explained to Mr O'Neill in the hearing I did not have access to the Document Upload Centre and asked if it was really necessary to arrange access to the documents uploaded for the final hearing. He said it was. I was subsequently given access by a member of staff. However, it transpired that I did not need to consider any of those documents. I did not read the final hearing bundle, and I did not read the witness statements. I did not take any of these documents into account when reaching my decision.

15. In her application, the Claimant raises her concern that she does not understand the legal reason for the Respondent insisting on her presence at the hearing. She stated it is a simple case and she did not need to attend, as everything she wanted to say is in her Particulars of Claim and the additional evidence supplied in the hearing. It was not a legal requirement that the Claimant attend the final hearing. However, the Claimant requested a postponement on 14 March 2024 on the basis that her solicitor had left without proper notice or an explanation, she could not represent herself as she lacked the necessary knowledge and legal experience and it would be unreasonable to assume that within a few days, she could prepare for the hearing herself. She stated she needed time to find new legal representation. However, at the preliminary hearing in May 2024, the Claimant said she could not afford another solicitor and made it plain she had no intention of attending the final hearing

listed in March 2024. I explained in the strike out judgment why I considered it was unreasonable for the Claimant to have failed to provide the Tribunal with a complete picture when she applied for the postponement.

16. The Claimant commented that she was perplexed about the Respondent and the Tribunal's persistence with obtaining the Claimant's medical records. At the start of the preliminary hearing the Claimant said she had not been fit enough to travel to the UK for the final hearing (although she later changed her position on this). She also said she had medical appointments she was required to attend in Latvia. In those circumstances, it was reasonable to comment on the fact that the Claimant had not provided any medical evidence.

17. The Claimant noted she was not responsible for Mr Dhliwayo's actions, and she had sought a no-win-no-fee solicitor but had not been able to find one. The Claimant made similar arguments to these at the preliminary hearing. She said she was not responsible for Mr Dhliwayo's actions and said she could not afford a solicitor. These points were taken into account. However, the fact that the Claimant was not planning on being represented at the final hearing had no bearing on the decision to strike out her claim. Many claimants represent themselves in the Employment Tribunal and the Tribunal is used to accommodating unrepresented parties.

18. The Claimant noted the Tribunal had not taken into account the fact she could not afford to travel to and stay in the UK for the hearing. She refers to her case being dismissed because of her financial struggles to pay for tickets and accommodation to attend the hearing. The Claimant did not make this argument at the preliminary hearing. She could have done. As noted in *Stevenson v Golden Wonder Ltd*, reconsiderations are not intended to provide parties with the opportunity to make arguments which they could have made before. As the Claimant did not make this argument, it was not taken into account, and it is not correct to say her claim was dismissed because of her financial difficulties to pay for tickets and accommodation to attend the hearing.

19. In the Claimant's application she asks me to consider reinstating claims struck out by Employment Judge Gumbiti-Zimuto in October 2023. She also requests an order for specific disclosure for the CCTV relevant to her claims. However, I am only reconsidering my decision to strike out her remaining claims as set out in my judgment of 8 July 2024. As all the Claimant's claims have now been struck out her case against the Respondent is at an end and therefore there is no basis on which to order disclosure of the CCTV.

20. For the reasons given above, the Claimant's application for reconsideration is refused as there is no reasonable prospect of the judgment being revoked or varied.

Employment Judge Annand
25 September 2024

JUDGMENT SENT TO THE PARTIES ON

Case No: 3305384/2022

30 September 2024

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FOR THE TRIBUNAL OFFICE