EMPLOYMENT TRIBUNALS

Claimant: Mr Lorenzo Ramos

Respondent: Auxistencia Ltd R1
Daniel Ibiza Sanchez R2

JUDGMENT

The claimant's application dated **14 August 2024** for reconsideration of the judgment, sent to the parties on **13 August 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*"*. In Outasight VB Ltd v Brown 2015 ICR D11, 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 current version of the rules, it had not been necessary to include more 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.

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. 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.

The Claimant's application

8. The Claimant submitted an email at 00:10 on 14 August 2024, within the relevant time limit, seeking reconsideration.

9. The application does not appear to have been copied to the Respondents. If the Claimant's application otherwise seemed to be one that had higher than "no reasonable prospects of success", then I would need to decide whether to waive or vary the requirement, under Rule 71, that the application be copied in writing to all other parties. However, it is more proportionate for me to consider the merits of the application first.

10. The chronology includes the following:

10.1. Two notice of claim letters (one for each case number, each sent to both respondents) were sent on 12 April 2023.

10.2. On 28 April 2023, the Claimant and both respondents were notified that the two claims had been transferred to Watford

10.3. On 21 June 2023, the Claimant and both respondents were notified that the two claims would be heard together

10.4. On 27 July 2023, some orders were sent on my instructions

10.5. On 24 August 2023, a strike out warning was sent to the Claimant on my instructions for the reasons stated in the letter

10.6. On 21 June 2024, no reply having been received to any of the above, I decided to strike out the claim, and gave instructions for judgment to be promulgated

10.7. On 13 August 2024, the judgment was promulgated

10.8. On 14 August 2024, at 00:05, the Claimant wrote with heading "Re: Reply to the order for information of the 27 July 2023". He sent his email by way of a reply to the Tribunal's email of 27 July 2023 at 14:05:06 BST (the email which attached the orders of 27 July 2023).

10.9. On 14 August 2024, at 00:10, the Claimant submitted the application for reconsideration mentioned in paragraph 8 above. He sent his email by way of a reply to the Tribunal's email of 13 August 2024 at 15:28:24 BST (the email which attached the strike out judgment).

10.10. On 22 September 2024, the Claimant sent a chaser to his reconsideration

application, referring to EAT deadlines.

10.11. On Monday 23 September 2024, a document referring the file to me was produced by HMCTS.

10.12. On Monday 30 September 2024, following my return from leave, I saw that referral (and the Claimant's correspondence of 14 August 2024 and 22 September) for the first time.

11. The orders I made on 27 July 2023 contained orders to each party.

11.1. In the case of the Respondents, they were informed that no response was on file, and that they had to write by 17 August 2023 to confirm if they had, in fact, supplied a response on time (by 10 May 2023). They were informed that if they did not reply, then it would be assumed that they did not intend to seek to defend the claims.

11.2. The Claimant was ordered to send certain information to the Tribunal and the Respondent by 17 August 2023.

12. On 21 August 2023, I asked HMCTS staff to look for any responses from either side. On 23 August 2023, I was informed that there was no trace of any reply. I therefore gave instructions for the strike out warning letter to be sent to the Claimant. He was told that he had until 14 September 2023 to object to strike out, either by supplying written reasons for the objection, or by asking for a hearing to object to strike out. The two reasons for considering strike out were:

12.1. The Claimant had not complied with the orders of 27 July 2023

12.2. The claim was no being actively pursued

13. The warning was copied to the Respondents. Given that they did not appear to have submitted responses by 10 May 2023 (as far as I was/am aware) and given that they had already been told that a failure to reply by 17 August 2023 would indicate that they had no intention of seeking to defend the claims, there was no need to warn the Respondents about possible strike out. There was no response to be struck out.

14. The Claimant does not deny receiving the 27 July 2023 orders. As mentioned above, he clearly did receive the email which attached the orders (because he replied to that email a little more than a year later, on 14 August 2024).

15. The 14 August 2024 (at 00:05) reply attaches a copy of the advert, as ordered. However, the reply does not fully comply with the orders made on 27 July 2023. In particular, he does not state that he has copied the reply to the Respondents. In addition, he also says that the other questions are irrelevant, though offers some answers to them.

16. Although the 14 August 2024 (at 00:05) reply to the Tribunal's 27 July 2023 email accurately referred to the date of the orders as having been 2023, the reconsideration application (at 00:10 on 14 August, so 5 minutes later) does not. It inaccurately referred to the orders as having been made 27 July 2024. I am satisfied that this is just a typing mistake, and that the Claimant fully understands that the orders were made more than a year before his email (rather than around 18 days before the email).

17. The reconsideration application states:

    17.1. The Claimant made a mistake because he wrongly believed that he had replied to the 27 July orders. (He states 27 July 2024, but he means 27 July 2023, and knows the orders were sent then).

    17.2. He says the reason for the mistake was that he mixed it up with a different claim. He gives no further details of which other claim he has in mind.

    17.3. He says that there is no prejudice to the Respondent if reconsideration is granted (because they did not file a response).

    17.4. He claims that no warning was sent to him about possible strike out (and correctly notes that there was no Unless Order made).

18. Firstly, the suggestion that no warning was sent is false. The warning was sent to the same email address that was used to send both the 27 July 2023 orders (which the Claimant received) and the judgment (which the Claimant also received).

19. Thus the alleged mistake by the Claimant (that he confused this claim with another) has to be seen in the light that he also overlooked (or made a mistake about) the 24 August 2023 letter from the Tribunal, as well as that of 27 July 2023.

20. It is incumbent on a litigant to keep track of the orders that the Tribunal makes, and to comply with them. I take into account that the Claimant is a litigant in person. However, he is someone that has made several employment tribunal claims, and he is not unfamiliar with the process. On the contrary, according to his own application in this case, the number of claims that he has submitted is sufficient that he has been able to mix up which claim is which.

21. His alleged error is not a reasonable one. In any event, he knew that he had submitted two claims in March 2023 (on 17 and 18 March 2023), and that he should be on the look out for correspondence and orders from the Tribunal about the claims. Even had he not promptly realised that the 27 July 2023 and the 24 Augst 2023 letters from the Tribunal required action for this case, and even if (which I do not accept) that had been a good enough excuse for failing to respond by 17 August 2023 or 14 September 2023, he had a further

9 months after that in which he could have either (i) realised his error and/or (ii) decided to take some action to actively purse the claim.

22. In terms of there being no prejudice to the Respondents, if I were to revoke the strike out judgment, the claim would potentially proceed in accordance with Rule 21. The Claimant would still need to comply with the 27 July 2023 orders; at the least, he would need to copy in the Respondents on his 14 August 2024 replies. There potentially would be prejudice to the Respondents if (i) I revoked the strike out judgment and (ii) later, a Rule 21 judgment was issued in the Claimant's favour. I do consider that their failure to respond to the claims by 10 May 2023 (and failure to respond the 27 July 2023 orders) are relevant matters, and I do take account of those facts. It is not correct that a decision to revoke the 21 June 2024 judgment (sent to the parties on 13 August 2024) can cause no prejudice to either respondent; I accept that there is potentially less prejudice to them than there might have been had they invested the time and resources to actively defend the claim when it was sent to them in April 2023.

23. Weighing up the public interest in finality of judgments, against the prejudice to the Claimant if I decline the application, and taking into account the Claimant's failure to actively pursue the claim, and his lack of a good reason for failing to comply with the orders or to respond to the strike out warning, 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: 30 September 2024

JUDGMENT SENT TO THE PARTIES ON

01/10/2024

FOR THE TRIBUNAL OFFICE

EMPLOYMENT TRIBUNALS

Claimant: Mr Lorenzo Ramos

Respondent: Auxistencia Ltd R1
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REASONS

1. Rules 70-72 of the Tribunal Rules provides as follows:

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> (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.

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7. 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

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19. Thus the alleged mistake by the Claimant (that he confused this claim with another) has to be seen in the light that he also overlooked (or made a mistake about) the 24 August 2023 letter from the Tribunal, as well as that of 27 July 2023.

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9 months after that in which he could have either (i) realised his error and/or (ii) decided to take some action to actively purse the claim.

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23. Weighing up the public interest in finality of judgments, against the prejudice to the Claimant if I decline the application, and taking into account the Claimant's failure to actively pursue the claim, and his lack of a good reason for failing to comply with the orders or to respond to the strike out warning, 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: 30 September 2024

JUDGMENT SENT TO THE PARTIES ON

01/10/2024

FOR THE TRIBUNAL OFFICE