EMPLOYMENT TRIBUNALS

Claimant: Mr M Lappin

Respondent: Commissioner of Police of the Metropolis

JUDGMENT

The claimant's application dated **21 August 2024** for reconsideration of the judgment, sent to the parties on **5 July 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.
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> **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.
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> **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 dated **21 August 2024**, within the relevant time limit, seeking reconsideration.

9. Judgment had been given orally on 28 May 2024, and a written judgment was produced that day, and sent to parties on 5 July 2024. A request for written reasons was made, and those reasons were sent to parties on 8 August 2024.

10. The Claimant requested reconsideration on 21 August, and followed that up with chasers on 13 September, 19 September and 3 October 2024. These items were referred to me, for the first time, on 7 October 2024. The chasers contained no additional arguments in favour of reconsideration.

11. The Claimant says that his witness, Aaron King, told him that he did not think his attendance was necessary, and that the Claimant relied on that assurance. None of my decisions were based on any failure to accept the accuracy of what Aaron King had written. Therefore, Aaron King's non-attendance is not a reason for me to revisit any of the findings of fact.

12. There is an allegation that the Respondent's representative, Mr Maton, "blocked" the Claimant from using Commander Savell or Mary Coller as witnesses. Even if I assume, for present purposes, that that is factually accurate, the application contains no details of what Commander Savell or Mary Coller might have said at the preliminary hearing that might have made any difference to my decision. Commander Savell's and Mary Coller's non-attendance, and the fact that I had no written statement from either of them, are not reasons for me to revisit any of the findings of fact.

13. The Claimant disputes the findings of fact which I made about when (if at all) his Federation representative told him that the time limit clock began to run from 26 June 2024. If the Claimant has evidence about that topic, he could and should have ensured that it was presented at the preliminary hearing, for example, by asking Inspector Lee to comment on it in his statement.

13.1. To the extent that the application is simply based on disagreement my findings (which were based on the Claimant's oral evidence), there is no good reason for me to revisit those findings; the reasons for them are explained already in the written reasons document.

13.2. To the extent that the application implies that the Claimant might have some other evidence, which is something other than simply his own recollection of oral discussions, he has neither attached a copy of that evidence to his reconsideration application, nor provided a good reason that the evidence was not presented at the preliminary hearing.

13.3. To the extent that the Claimant argues that the Respondent's representative is responsible for the Claimant's failure to (allegedly) understand what was required, this is something that was discussed at the beginning of the hearing:

13.3.1. The Respondent's representative had stated that the parties were not required to draft "statement of issues". (Email of 16 April 2024 at 15:43).

13.3.2. However, as discussed at the time, there were two separate orders (send to parties on 6 February 2024): one was for "draft statement of issues" if both parties were professionally represented; one was for "full written statements of the evidence they and their witnesses intend to give at the hearing"

13.3.3. Even if the Respondent's representative was incorrect to say that no draft "statement of issues" was required (and, in fact, the Claimant was not legally represented, so the order was not triggered), I was satisfied, notwithstanding the Claimant's submissions at the time to the contrary, that the Claimant had known that there was an order for him to provide a witness statement (and that the order for statements did not simply refer to people other than him).

13.3.4. I did not accept that the Claimant was misled by the Respondent in relation to the need to provide a statement.

14. The Claimant's argument on 21 August 2024 that he was misled by the Respondent's representative adds nothing to the points that were already the subject of a more detailed discussion at the hearing.

15. However, in any event, after I told the Claimant that I did not agree that he had been misled by the Respondent, I told him that I would consider postponing the hearing to allow (i) King and Lee to attend the hearing and (ii) the Claimant time to prepare a written statement. The Claimant stated that his preference was to go ahead on the day, giving evidence-in-chief orally,

without a written statement, and for me to read King's and Lee's statements, giving them such weight as I saw fit.

16. The Respondent also stated that it was not seeking a postponement. I informed the parties that I would not postpone of my own initiative, and would instead allow the Claimant permission to give evidence without a statement.

17. In any event, even if the parties had produced a list of issues, then that would have been something different to the agreed facts document that the Claimant referred to in his reconsideration application. Furthermore, even on the face of the reconsideration application, if the Claimant knew that there was no agreed facts document, then that is not a sensible reason for him to have omitted to seek to provide evidence to prove a relevant fact.

18. For the reasons stated above, having considered the Claimant's 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: 7 October 2024

JUDGMENT SENT TO THE PARTIES ON

…… .....14 October 2024

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FOR THE TRIBUNAL OFFICE