EMPLOYMENT TRIBUNALS

Claimant: Mr K Jedlovsky

Respondent: Securitas Security Services (UK) Ltd

JUDGMENT

The Respondent's application dated **2 September 2024** for reconsideration of the judgment given orally on 2 September 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 Respondent's application

8. The Respondent submitted an email dated **2 September 2024**, within the relevant time limit, seeking reconsideration.

9. The application argues that my decision not to strike out the claim was made before I knew when the final hearing would take place if I refused the application. The comment is true in the literal sense that I did not know the exact start and finish dates until I phoned the HMCTS listing team during the hearing, obtained some suggested dates, and canvassed them with the parties.

10. However, the implied assertion that I was unaware that the earliest available date for a 5 day hearing was not before 2026 is incorrect. As a salaried judge, I regularly liaise with the listings team, both when listing a specific hearing, and more generally. I knew before phoning them on this occasion that (in the absence of exceptional circumstances, such as a party or crucial witness having a terminal illness, for example), there would be nothing earlier than April 2026 onwards for a 5 day final hearing.

11. The application also asserts that I did not give oral reasons as to why a fair hearing on those dates was possible.

12. The written and oral application was not based on Rule 37(1)(e). To the extent, if at all, that the application seeks to argue that the oral application might have gone on to raise Rule 37(1)(e) if I had allowed more time for the application, I am satisfied that I allowed sufficient time for the oral submissions.

13. Thus, to the extent that the application implies that I failed to deal with an argument that was presented to me, there are no reasonable prospects that I would revoke or vary the judgment based on that suggestion.

14. To the extent (if at all) that there is a suggestion that I should, of my own initiative, have struck out under Rule 37(1)(e), I do not agree.

15. The Respondent's written statements have already been prepared (based on what Mr Lee told me orally in response to my questions, and based on the emails sent to the Tribunal attaching those statements). I rejected the argument that the Respondent did not know which case it had to meet and could not prepare for the hearing generally, or prepare its witness statements, unless and until the Claimant supplied information that (according to the Respondent) was still outstanding following EJ Frazer's orders.

16. On my analysis, the Respondent had known the case that it had to meet (in sufficient particularity in EJ French's opinion, with which I concur) since 21 November 2023.

17. Since then the Claimant has (arguably) reduced the number of comparators (without adding new ones) and has (unarguably) withdrawn part of the claim.

18. The only "new" matter is that I have added discriminatory dismissal to list of issues, based on my decision that that was a complaint that was presented in the claim form itself, and based on my acceptance of the Claimant's reasons for its omission from list of issues drawn up in November 2023. The arguments in support of the allegation that the dismissal was an act of discrimination are based on the same underlying theory as the specific (alleged) acts that were already in list of issues (the Claimant's argument being that he was scrutinised more than others, and/or that the rules were applied more strictly/harshly to him than to others) is something that the Respondent already knew was part of the case it had to meet. It also knew that unfair dismissal was one of the complaints and that (therefore) evidence from the decision-maker about why they dismissed, and what evidence they had, would potentially be required.

19. Although it is true that the new hearing date is now more than 5 years after the claim was issued (and more than 6 years or more from some of the events that there might be evidence about), there is no possibility that the Respondent will persuade me that I ought to have struck the claim out on the basis that a fair trial is no longer possible.

20. For completeness, the Respondent's characterisation of the decisions that I made is not necessarily one that I agree with.

    20.1. It had already been decided, in advance of the hearing before me, that the final hearing dates were to be vacated.

    20.2. I was not necessarily of the view that everything pointed towards strike out, other than the fact that a fair trial remained possible. The other relevant factors are as set out in the written reasons.

21. For the reasons stated above, having considered the Respondent'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: 11 September 2024

JUDGMENT SENT TO THE PARTIES ON
15 October 2024

FOR THE TRIBUNAL OFFICE