EMPLOYMENT TRIBUNALS

Claimant: Saurabh Kejriwal

First Respondent: OANDA Europe Limited
Second Respondent: Catherine Collingwood
Third Respondent: Peter Ashton
Fourth Respondent: Bhumii Shah
Fifth Respondent: Agata Puchalska

Heard at: London Central (via CVP) **On:** 20 August 2024

Before: Employment Judge Bunting

Appearances
For the claimant: In person
For the respondent: Mr S Way, counsel

JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

The Claimant's application dated (16 September 2024) for reconsideration of the judgment set out in written reasons dated 06 September 2024 following a request from the Claimant, is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Introduction

1. At a preliminary hearing on 20 August 2024 the claimant's claim against the second to fifth defendants were dismissed as being out of time in an oral judgment given on the day.

2. The claimant subsequently requested written reasons and, following receipt of those, applied for reconsideration for reasons set out in an email dated 16 September 2024. However, this email was not received by me until 02 October 2024.

3. In addition, the claimant has applied in the same document (under r34) to amend the claim by adding the second to fifth respondents as parties. This claim was made orally at the hearing, but I refused the application to amend.

Reconsideration
Principles of Reconsideration

4. With an application for reconsideration, as at any stage in the proceedings, the tribunal must give effect to the overriding objective found at *Rule 2 Employment Tribunals Rules of Procedure 2013*. This says:

> *"2 - The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*
>
> > *(a) ensuring that the parties are on an equal footing;*
> > *(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
> > *(c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
> > *(d) avoiding delay, so far as compatible with proper consideration of the issues; and*
> > *(e) saving expense.*
>
> *A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."*

5. Rule 70 provides a power to confirm, vary or revoke a judgment. This provides that a judgment can be reconsidered *"if it is in the interests of justice to do so"*. Rule 71 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. This application for reconsideration is made in time.

6. Rule 72 (1) of the Rules provides:

> *"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. …"*

7. There is no requirement for an oral hearing. The interest of justice in this case reflects the interests of both parties. The applicant and the respondent to a reconsideration application both have interests which much be regarded against the interests of justice (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*). In *Brown*, Her Honour Judge Eady QC said that the general public also have an interest in such cases because there should be an expectation of the finality of litigation.

8. This was an expectation outlined by Mr Justice Phillips in *Flint v Eastern Electricity Board [1975] ICR936*, who said *"it is very much in the interests of the general public that proceedings of this kind should be as final as possible"*. He also said it was unjust to give the loser in litigation a *"second bite of the cherry"* where, having lost and learnt of the reasons for losing, a litigant seeks to re-argue points and bring additional evidence or information which would overcome the reasons given for the loss.

9. Consequently, the provision of evidence said to be relevant *after the conclusion of the hearing* will rarely serve to alter or vary the judgment given unless the party seeking to introduce the evidence can show (*Ladd v Marshall [1954] EWCA Civ 1*):

   9.1. the evidence could not have been obtained with reasonable diligence for use at the trial;

   9.2. the evidence would probably have an important influence on the result of the case; and

   9.3. the evidence must be apparently credible.

10. I also remind myself that there was no application by the claimant to adjourn the case either before, or at, the hearing, to obtain further evidence, instruct a lawyer, or to better marshal his arguments.

Time Limits

Grounds and reasons of reconsideration application

11. The application for reconsideration is effectively a re-statement of the claimant's case as it was it the hearing. The claimant sets out the history of the case and gives reasons why he was not able to submit the claims in time.

12. The claimant also states that at the day of the hearing he his ADHD and ASD '*didn't allow for … clear answers since there wasn't enough time to process the questions for me an answer being fully aware of what was being asked*'.

13. To the extent that that the claimant is saying that he did not have a fair hearing, I do not accept that.

14. I set out (para 7) the adaptations requested by the claimant at the hearing, and there was no suggestion from the claimant at any time that he was having difficulty processing questions of give an answer. Further, the hearing lasted all day, with several of the issues that were scheduled to be determined having to be adjourned to a different day as we ran out of time.

15. However, it was made clear to the claimant that he was not being rushed and that the Tribunal would give breaks as and when needed.

16. In addition, the claimant has submitted further evidence in the form of an email from 'psychiatryUK'. This is dated 09 September 2024, as so is after the hearing. It is a short note that states that the diagnosis of ADHD and ASD '*does have a substantial effect on his day to life*' and then gives some examples.

17. The email is generic in nature, and does not seem to go any further than the evidence that was before the Tribunal at the hearing.

18. The respondent has not submitted any arguments in response.

Decision on the reconsideration application – time limits

19. As stated, the claimant's application is a re-arguing of his case as it was at the hearing. I cannot see any new argument that he has put forward.

20. In relation to the further evidence, it does not take the claimant's case any further.

21. In any event, it is not the purpose of reconsideration to allow a party to challenge a judgment with evidence which should have been provided prior to the case being determined. In addition, reconsideration is not the opportunity to re-argue the case that was previously unsuccessful. It is a fundamental requirement of litigation that there is certainty and finality.

22. For those reasons set out above, the original judgment stands.

Application to amend

23. Given the nature of the application, I can take this relatively shortly.

24. The power for an Employment Tribunal to add a party is set out in Rule 34:

> **Addition, substitution and removal of parties**
> 34. The Tribunal may on its own initiative, or on the application of a party or any other person wishing to become a party, add any person as a party, by way of substitution or otherwise, if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings; and may remove any party apparently wrongly included

25. The claimant has specifically referred to the case of **Selkent Bus Co Ltd v Moore 1996 ICR 836** that sets out the principles in relation to an application to amend.

26. I was not referred to any other authorities in the application. Whilst the application would appear to raise issues in relation to *res judicata* and similar principles, it does not appear to be necessary to consider this.

27. The claimant's grounds are a repetition of the application that he made orally at the hearing, which were dealt with at paras 64-65. They are, in effect, identical to the reasons that he gave for resisting the application to strike out on time grounds.

28. In deciding an application, I must have regard to all the circumstances of the case. These include (but are not limited to):

    28.1. The nature of the amendment,
    28.2. The position in relation to time limits,
    28.3. The timing of the application.

29. In this case the nature of the amendment, introducing four new parties, is a substantial one.

30. However, the two most significant factors are those set out above at 28.2 and 28.3. I have already set out my conclusions on time limits, which would apply to each of these applications. That strongly points against the application to amend.

31. Further, in relation to 28.3, the application was made some 8½ months after the claims against the proposed respondents were made. That is a significant period of time that points further against the application.

32. Whilst there is a broad discretion, I do not see anything in the application that the claimant makes that would mean I could conclude that it was in the interests of justice to amend the claim in light of my conclusion on the time limits point (whether considered as an application for reconsideration of the decision on 20 August 2024 or as a freestanding application to amend).

33. Again, for those reasons, the original decision to refuse to amend the claim stands.

Employment Judge Bunting

08 October 2024

Sent to the parties on:

21 October 2024
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For the Tribunal Office:

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