Case No: 3314919/2020

EMPLOYMENT TRIBUNALS

Claimant: Ms Y Niazi

Respondent: Hill Group Services Ltd

JUDGMENT

The claimant's application dated **12 October 2024 and 24 October 2024** for reconsideration of the judgment, made at a hearing on 26 October 2021 sent to the parties on **4 November 2021** 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.
>
> (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

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 **12 October 2024**, with attached witness statement of Bina Solanki and letter seeking reconsideration.

9. The Claimant submitted a further email dated **24 October 2024**. That made further comments in support of reconsideration.

10. There is a final hearing due to commence on 4 November 2024. The judge who made the decision in question is not available to decide the application before then, and REJ Foxwell has therefore appointed me, EJ Quill, to decide it.

11. The fact that the Claimant has suggested that there is an application to amend the claim is not relevant to the part of the correspondence that seeks that the judgment from October 2021 (so three years ago) be amended. The fact that the Respondent has commented on the application (and the fact that the 24 October 2024 email is, in part, a response to what the Respondent has written) is also not relevant. If the application gets past the "no reasonable prospects" assessment, then the Respondent can comment then, but its views are irrelevant before then.

12. The application is long outside the 14 day time limit. Prior to deciding what to do about this procedural issue, I have assessed the substance of the application in order to decide whether it is necessary to make a decision about whether to extend time.

13. For the reasons mentioned below, the substance of the application means that it has no reasonable prospects of success, and it is therefore unnecessary to deal with the time point in its own right.

14. In Ladd v Marshall [1954] 1WLR 1489, a test was specified for the civil courts for assessing an application made to submit new evidence in support of a

challenge to a judgment previously issued. Specifically, the party seeking to adduce the fresh evidence must show:

(1) that the evidence could not have been obtained with reasonable diligence for use at the original hearing,

(2) that it is relevant and would probably have had an important influence on the hearing, and

(3) that it is apparently credible.

15. This test is incorporated into EAT's Practice Direction and has also been stated to be a useful guide to employment judges who are deciding a reconsideration application. The test does not supplant the wording of the rule (as quoted above) but does set out a helpful approach as to how the interests of justice can be assessed, and how the public interest in finality of judgment can be given due weight.

16. In this case, for Part 1 of the Ladd test, the Claimant's intention to rely on Bina Solanki as a witness was mentioned at the hearing on 18 August 2021 before EJ Bedeau. So, if the Claimant thought that Bina Solanki had relevant evidence for the preliminary issue, she could have arranged for to attend the 26 October 2021 hearing, or sought a witness order for her. Since the only evidence that Bina Solanki gives is about things that were directly in the Claimant's own knowledge, it is not the case that, on talking to Bina Solanki, the Claimant discovered something that she did not previously know about.

17. The Claimant therefore could, with reasonable diligence, have obtained the evidence for use at the original hearing.

18. For Part 2 of the Ladd test, the evidence probably would have had no effect on the outcome of the original hearing.

    18.1. The written reasons explain the judge's findings about the Claimant's period as an agency worker.

    18.2. Amongst other things, the decision included that there was an application form dated 9 September 2018.

    18.3. At paragraphs 11 and 12, the judge found that the Claimant's line manager "*may have gone so far as to say that the job was hers, subject to his obtaining necessary approvals to appoint her*" and "*sought approvals to appoint, first from a director and then from the CEO, in order to engage the claimant as an employee of the respondent*".

    18.4. At paragraph 12 there was an offer letter dated 13 September 2018.

19. Thus, even if – hypothetically – the evidence of Bina Solanki might have

affected the judge's decisions that 16 September 2018 was the earliest date that a contract might have been formed (paragraph 26) and/or that the actual commencement date was 24 September 2018, it could not have led to a decision that the contract formed any earlier than the approval stage on 10 and 11 September 2018 (even ignoring that the offer letter was on 13 September 2018).

20. Bina Solanki's opinion about what offers were made, and when, and what the legal effect of the oral discussions between the Claimant and the line manager were would have had no effect on the judge's decision at all. He knew what the Claimant's evidence was about those matters.

21. Thus the Claimant does not meet the second part of the Ladd test either.

22. I have not formed an opinion as to the credibility of the statement. It can be assessed after the witness gives evidence at the final hearing (if she is called as a witness at that hearing). However, even on the assumption that it is 100% (credible and) accurate as to all the facts stated, neither the statement nor the Claimant's correspondence in support of the application provide any reasonable prospects that the decision on the preliminary issue would be revoked and the decision taken again.

23. 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: 4 November 2024

JUDGMENT SENT TO THE PARTIES ON

4 November 2024

FOR THE TRIBUNAL OFFICE