



EMPLOYMENT TRIBUNALS

Claimant: Mr S Dominte

Respondent: City Site Solutions

JUDGMENT

The claimant's application dated **13 March 2024** for reconsideration of the judgment, sent to the parties on **11 March 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. Rule 20 reads as follows:

20.— Applications for extension of time for presenting response

(1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.

(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.

(3) An Employment Judge may determine the application without a hearing.

(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside.

The Claimant's application

6. The Respondent submitted an email dated **13 March 2024**, asking the Tribunal to "reconsider" the judgment..
7. The application did not comply with the rules in that it was not sent to the other party.
8. On the face of the document, it could be interpreted as an application for reconsideration under Rule 71. However, given that there was no response on record, there would also have had to be an application for extension of time. If granted, there would also have to be a response which complied with

Rules 16 and 17 (the format of, and minimum information required for, a response) unless that requirement was waived. Rule 20(1) envisages that, at the same time there is an application for extension of time (made, as here, after the deadline stated in the notice of claim letter has expired) a copy of the proposed response (which ought to comply with the Rules) is submitted.

9. Under Rule 20, a claimant has the right to object to an extension of time. Under Rule 72, the other side's comments are only required if the application gets past the "no reasonable prospects of success" stage.
10. Before I had seen it, the Respondent's 13 March 2024 email was forwarded to the Claimant with a request for comments. The letter of 26 April 2024, copied to the Respondent, required the Claimant's comments by 3 May 2024.
11. On 24 June 2024, on my instructions, a letter was sent to parties. It ordered the Respondent to submit an application for extension of time, and draft response, by 8 July 2024. It ordered the Claimant to submit comments by 15 July 2024. It pointed out that an extension of time would mean that the judgment would be revoked. (This being the effect of Rule 20(4), albeit the rule was not quoted in the letter.)
12. The Claimant responded to that letter, copying in the Respondent, on 26 June 2024 at 09:46 (and the documents which the Claimant requested in that email were sent to the Claimant on 3 October 2024).
13. There has been no reply from the Respondent to the correspondence mentioned above, and there has been no application by the Respondent for an extension of time.
14. The 13 March 2024 email did not deny receipt of the claim form (which was sent to the Respondent with a Notice of Claim letter on 24 October 2023). The only reason offered for (not filing a response in time or) revoking the judgment was as follows. The email asserted that the Respondent had received the claim form in November, and paid him the missing wages "straight away", and that the Claimant had said he would retract the claim.
15. The email does not amount to a response which complies with Rule 16(1). If it is intended as a response to the claim then it is rejected [as per Rule 17(1)(a)] because it is not on the prescribed form. There is no reason to waive or vary this requirement in the circumstances, including that the Respondent was given an opportunity to do it by 8 July 2024.
16. I do not grant an extension of time for similar reasons.
 - 16.1. The Respondent was told to make a formal application by 8 July 2024, and to send the draft response form with the application.
 - 16.2. The facts alleged in the email might amount to a partial defence, if true.

That is they might have been a persuasive reason that no order for it to make a payment to the Claimant should be made, but they would not show a good reason that the Claimant was not entitled to a declaration.

17. The Respondent seeks revocation of the judgment, but without its having to comply with the order which required it to file a response by 21 November 2023, or the rules which explain how to make an application for extension of time for a response, or the order to make an application by 8 July 2024.
18. If I did revoke the judgment, then the case would still be in the same position that it was in on 19 February 2024; that is, the Claimant has submitted a claim, to which there has been no response. Therefore it would lead again to another decision being taken under Rule 21, albeit potentially with the need to take into account the 19 March 2024 email before making the new decision.
19. Given the public interest in the finality of judgments, and the Respondent's failure to engage in the process, both before 19 February 2024 and after 19 March 2024, I am satisfied that there is no reasonable prospect that I would decide that it was in the interests of justice to revoke the judgment.
20. For the reasons stated above, the application is refused.

Employment Judge Quill

Date: 7 November 2024

JUDGMENT SENT TO THE PARTIES ON

14 November 2024

FOR THE TRIBUNAL OFFICE