**Case No: 2400231/2024**

# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Peters

**Respondent:** Mitie Limited

# JUDGMENT

The Claimant's application dated 23 and 26 September 2024 for reconsideration of the judgment sent to the parties on 25 September 2024 is refused.

# REASONS

1. The Tribunal has undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in an email dated 23 September 2024 and a follow up email dated 26 September 2024 The Tribunal has also considered comments from the respondent dated 5 November 2024.

**The Law**

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> **"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."**

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> **"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."**

6. In **Ebury Partners UK Limited v David [2023] EAT 40** the EAT put it this way in paragraph 24:

> **"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. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT."**

7. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication. Where a party has raised arguments, or had a reasonable opportunity to raise them, it will not generally be in the interests of justice to grant them a second such opportunity.

## The Application

8. On 23 September 2024 the claimant's claim was listed for a preliminary hearing to identify the issues and make case management orders.

9. The Claimant failed to attend the hearing (listed by CVP). As paragraph 5 of the case management order makes clear that failure to attend followed on from a pattern of non-engagement.

10. The Tribunal dismissed the Claimant's claim under Rule 47 of the Employment Tribunal Rules 2013 (non-attendance).

11. The Claimant sent an email timed at 7.21pm on 23 September to the Tribunal asserting he was in hospital. No further evidence was provided by the Claimant and no explanation was provided as to why he did not seek an adjournment of the hearing if the attendance at hospital was planned.

12. The Tribunal wrote to the parties on 24 September acknowledging the email and inviting the Claimant to apply for a reconsideration. The claimant was told he would need to provide evidence to support the assertion he was in hospital and was unable to engage with the hearing.

13. The Claimant sent a further email to the Tribunal on 26 September. The Claimant did not provide any evidence that he was in hospital and unable to attend the hearing. The Tribunal wrote to the parties on 23 October seeking the Respondent's comments. These comments were received by email on 5 November 2024. The Respondent invited the Tribunal to refuse the reconsideration application.

## Conclusion

14. Having considered all the points made by the Claimant the Tribunal is satisfied that there is no reasonable prospect of the original decision being varied or revoked. The Claimant failed to attend a hearing specifically listed to identify the issues in his claim, those issues being impossible to identify from the claim form. He failed to attend that hearing, having had a history of non -engagement. He then failed to provide any evidence of a legitimate reason for his non-attendance, despite being requested to provide such evidence. It is unclear why he did not respond to the Tribunal's attempts to contact him by phone if he was experiencing technical difficulties with the remote hearing. The application for reconsideration is refused.

Employment Judge SERR
24 November 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON
2 December 2024

FOR THE TRIBUNAL OFFICE