



EMPLOYMENT TRIBUNALS

Claimant: Mr J Peacock

Respondent: NMW Estates Ltd

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Respondent's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Respondent has applied for a reconsideration of the Judgment dated 28 October 2024 which was sent to the parties on 7 November 2024. The grounds are set out in his application of 20 November 2024.

Relevant principles

2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under rule 71, an application for reconsideration under rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received just inside the relevant time limit.
3. The grounds for reconsideration are only those set out within rule 70, namely that it is necessary in the interests of justice to do so. That allows for a 'broad discretion' to be exercised (*Outasight VB Ltd-v-Brown* UKEAT/0253/14) and, although the list of factors that may be relevant will be fact sensitive in every case, it was clear from the decision in *Outasight* that finality in litigation is invariably going to be one such factor. That has been a thread which has been common to many of the authorities in this area, stretching back, perhaps, to Phillips J's judgment in *Flint-v-Eastern Electricity Board* [1975] ICR 395. Most recently, in *Phipps-v-Priory Education Services Ltd* [2023] EWCA Civ 652, the Court of Appeal encouraged an approach to rule 70 which involved the weighing of the injustice that the parties would suffer if a reconsideration application was allowed or refused, but by also "giving weight to the public interest in the finality of litigation." (paragraph 36).

Discussion and conclusion

4. In his application, the Respondent relies upon 3 grounds;

- a. That he did not receive notification of the hearing;

He has not set out any reasons why the matters set out in paragraphs 3 – 5 of the Reasons of 28 October 2024 might have been wrong or provided any evidence which might have suggested otherwise. He bald assertion is not sufficient to answer the significant doubts which surround his non-attendance;

- b. That the Claimant's employment commenced on 7 March 2022 according to his contract;

See paragraphs 10 and 11 of the Reasons. Again, the Respondent has provided the 2022 contract but his assertions do not overcome the findings made as a result of the evidence heard from the Claimant about his service having commenced in 2016.

- c. That all salary deductions were undertaken in accordance with the payroll PAYE scheme.

Again, the Respondent's declaration to that effect has not attempted to address the findings that were made on the basis of the evidence that was heard. It cannot be said that this argument has a reasonable prospect of success at a reconsideration hearing without more and without some substance behind the argument.

5. Accordingly, the application for reconsideration pursuant to rule 72 (1) is refused because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Livesey

Date: 22 November 2024

JUDGMENT SENT TO THE PARTIES ON
5 December 2024

Jade Lobb
FOR THE TRIBUNAL OFFICE