EMPLOYMENT TRIBUNALS

Claimant: Wajid Khan

Respondent: Counter Security Services Limited

Heard at: London South (in public by video) **On:** 10 December 2024

Before: Employment Judge N Wilson

Appearances

For the claimant: no attendance
For the respondent: Mr Naveed (director of respondent)

JUDGMENT ON APPLICATION FOR RECONSIDERATION

In exercise of powers contained in Rule 72 of the Employment Tribunals Rules of Procedure 2013 (**"Rules"**), the **respondent's** application of 28 June 2024 for reconsideration of the Rule 21 Judgment of EJ Siddall dated 11 June 2024, is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Principles of Reconsideration

1. When approaching any application, and during the course of 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."

2. The power to confirm, vary or revoke a judgment is found at *Rule 70*. That 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.

3. By rule 70, the Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. Since the introduction of the present rules there has been a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.

4. 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. …"

5. Where an Employment Judge refuses an application following the application of Rule 72(1), then it is not necessary to hear the application at a hearing. Rule 72(3) provides that the application for reconsideration should be considered in the first instance, where practicable, by the same Employment Judge who made the original decision. I am not the Judge who made the decision in respect of which the respondent makes this application for reconsideration. Given the facts (the Judgment is a Rule 21 Judgment) I do not consider it prejudices any party for EJ Siddall not to consider the application. The Judgment which is the subject matter of this application was not issued following a hearing or having heard evidence.

6. The interests of justice in this case should be measured as a balance between both parties; both the applicant and the respondent to a reconsideration application have

interests which must be guarded against (*Outasight VB Limited v Brown [2014] UKEAT/0253/14*).

7. 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. 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.

8. 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*):

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

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

   8.3. the evidence must be apparently credible.

Grounds and reasons of reconsideration application

Background

1. The claimant was employed by the respondent as a security guard from 1 August 2021 until 15 October 2021. Early conciliation started on 29 October 2021 and ended on 9 December 2021. The claim form was presented on 17 December 2021.

2. The claim is about:

   a) Notice pay
   b) Holiday pay
   c) Arrears of pay

3. The respondent states the claimant was working under a zero-hour contract and there is no paid notice period. It is asserted the claimant was working on a quarantine job and he left the company without informing the respondent. The respondent states no notice pay is owed. The respondent states the claimant was working for less than 3 months and as such only his holiday pay is due, and the

respondent indicated in previous correspondence to the Tribunal they were willing to negotiate about this element of the claim via ACAS.

4. A Rule 21 Judgment was issued (with the amount to be quantified) on 4 March 2022, in the absence of any response to the claim from the respondent being received within the permitted 28-day period. A request for information was made of the claimant due to no response having been received by the Tribunal to this claim from the respondent. A Rule 21 Judgment was subsequently issued by Employment Judge Siddall dated 11 June 2024 awarding the sum of £5909.40 net to the claimant.

5. The respondent has been writing to the Tribunal asserting it has filed a response to the claim in time via the government portal but to date no evidence of that submission has been provided despite requests from the Tribunal. More recently the respondent has made a request for reconsideration of that Rule 21 Judgment on 28 June 2024.

6. The hearing today is listed to deal with this.

7. The claimant did not attend the hearing. We proceeded in his absence as no request for postponement or explanation for non -attendance has been provided. I do not consider the claimant is prejudiced in the matter being dealt with in his absence given the nature of the application.

8. I explained to Mr Naveed (a director of the respondent) who attended today that the evidence the Tribunal has ben requesting to show the respondent did indeed respond to this claim in time has still not been provided despite multiple requests being made. It is also of great concern that the ET3/response has still not been provided over 2 years from when the respondent knew or ought to have known that Judgment had been entered. The respondent has had sufficient time to deal with the Rule 21 Judgment.

9. Notwithstanding this I still gave Mr Naveed the opportunity to send me any evidence he has of the original ET3 submission having been made in time. I subsequently received a number of documents which the respondent purported was evidence of the ET3 submission having been made in this case, but it was plain that they did not relate to this case. I took time during the hearing to read these additional documents provided.

Decision on the reconsideration application

10. The respondent today has provided me with additional documents in the form of auto emailed responses/submissions acknowledgments.

11. I have a submission date from the government website of 6 April 2022 with a reference number 332021051100. If that relates to this claim it is plainly out of time.

12. I have a letter from the Tribunal with an ET3 response acceptance letter but that relates to a different claim against the same respondent being pursued by a

different claimant with a different claim number (the clamant in that claim is a Mr Hossain).

13. There is then an email with a submission date quoting the reference number 232020019800 and whilst the submission date is 21 January 2022 notably that is the same date as the response for the other claim is filed for this respondent with the case number 2305973/2021 (Mr Hossain's claim).

14. There is an email from the respondent to the Tribunal on 21 December 2022 saying they have already filed a response to this claim but that does not tie in with the date the response to the ET1 for this claim was due as this claim was presented a year earlier in December 2021.

15. There is no evidence before me still that the respondent filed a response to this claim on time. We also still do not have a copy of any ET3 which is purported to have been submitted.

16. I note the request for reconsideration also refers to a different date. In the written reconsideration request the respondent says they filed the ET3 in August 2022 which is still out of time. Given the respondent has been able to submit evidence of other submission filings for other claims it is still not clear why they are unable to evidence that the ET3 for this claim was indeed filed and the date it was filed. In the absence of not receiving evidence of the response being filed on time it appears they have simply omitted to do so. Mr Naveed indeed states there were 'many emails and many claims' at that time.

17. In the circumstances as I have seen no evidence of any response having been submitted for this claim on time, I will not be setting aside the previous Judgment of EJ Siddall. Even if evidence of the ET3 submission had been provided I cannot see it is in the interests of justice to set aside a Judgment for a claim commenced in 2021 as I am not satisfied a fair trial will be possible given the length of time which has since elapsed and the likely further time it will take for the matter to be listed for a final hearing.

18. In view of the above determination of this application, the original judgment still stands.

Employment Judge N Wilson
Dated: 15 December 2024