



EMPLOYMENT TRIBUNALS

Claimant: Miss A Shahu

Respondent: Iknowa Ltd

JUDGMENT

The Respondent's application dated **4 December 2024** for reconsideration of the judgment sent to the parties on **19 November 2024** is refused.

REASONS

1. The Claimant brought complaints of harassment related to sex, unauthorised deduction from wages, unfair dismissal, redundancy payment, breach of contract and failure to pay accrued but untaken annual leave. The claim was accepted against the present Respondent only. The claims were served on the Respondent's registered office address, but the Respondent failed to file a response by the deadline. The claim was reserved by the Tribunal some months later following a subsequent change in the Respondent's registered office address, and the Respondent again failed to file a response by the deadline. The claim was therefore listed for a final hearing to take place on 15 November 2024 under Rule 21 of the Employment Tribunal Rules of Procedure (as in force at the relevant time).
2. At that hearing, the Respondent applied for an extension of time to present a response. For the reasons I gave orally, I refused that application. I then went on to determine the claims. I permitted the Respondent to participate in respect of remedy only, again for the reasons I gave orally at the time. I gave judgment in respect of the Claimant in respect of the complaints of harassment related to sex and unauthorised deduction from wages, and dismissed the remaining complaints – once again, for the reasons I gave orally at the time. Neither party has requested written reasons for those decisions.
3. The Respondent now applies for a reconsideration of both the decision not to allow an extension of time to present the response, and the substantive judgment. The grounds are set out in the Respondent's emailed letter of 4 December 2024, and accompanied by a draft ET3 and narrative Response. In summary, the basis of the application is two-fold:
 - a. Firstly, that the Respondent did not receive the claim on either of the two occasions that it was sent by the Tribunal to their registered office address as it was at the time the correspondence was sent, nor did

they receive other correspondence sent by the Tribunal to their registered office address. The first time that they became aware of their claim was when they were contacted by their representatives, Croner, having seen their name on the public cause list.

- b. Secondly, that there was a discrepancy in the Claimant's case regarding whether anyone else was present when the Claimant was subjected to the (claimed) incident of sexual harassment.
4. The Claimant has written to the Tribunal objecting to the application.
 5. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). I refer throughout to the Rules as they were in force at the time when the application for reconsideration was made (although there is no substantive change in respect of the rules now in force). Under Rule 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
 6. Rule 71 provides that 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.
 7. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out 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.
 8. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust* UKCAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

"34. [...] 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 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. Tribunals have a wide discretion whether or not to order reconsideration.

35. Where [...] a matter has been fully ventilated and properly

argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

9. The starting point is that the Respondent’s application was received outwith the time limit set out in Rule 71. The Judgment was sent to the parties on 19 November 2024. The time for making an application for reconsideration therefore expired on 3 December 2024 – that is, the day 14 days after the Judgment was sent to the parties. The application was not received until 4 December 2024. It does not state on its face any reason why it could not have been made in time, or why it would be in the interests of justice to exercise the Tribunal’s power under Rule 5 to extend time. On that basis alone, therefore, I would have rejected it.

10. In any event:

- a. The Respondent has presented no additional evidence regarding the assertion that it did not receive the claim form when served on it, nor regarding what steps it took to become aware of post sent to its registered office address. All that has been presented within the application is a bare assertion by the Respondent’s representatives that the Respondent did not receive any correspondence from the Tribunal. There is nothing within that which would have led me to consider that it was in the interests of justice to reconsider my initial decision.
- b. The Respondent instructed representatives on 4 November 2024, some 11 days before the hearing. So even if the application for reconsideration had been supported by additional evidence, there would have needed to have been some explanation for why that evidence could not have been presented at the hearing on 15 November 2024. There was no such explanation within the application. An application for reconsideration is not a second bite of the cherry.
- c. The alleged inconsistency relies on reading two parts of a single sentence within the ET1 as referring to the same incident, when it is clear that they do not. The Tribunal had the benefit of hearing live oral evidence from the Claimant (as well as having her witness statement). Her evidence regarding the allegation of harassment was accepted. There is no reasonable prospect of that finding being overturned on the basis advanced by the Respondent.
- d. Finally, and for completeness, the application does not suggest that there is any reason why the judgment in respect of the complaint of unauthorised deduction from wages should be reconsidered. The draft Response presented with the reconsideration application appears to admit the unauthorised deduction from wages claim.

11. Having carefully considered the Respondent’s application, and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there is any reasonable prospect of the Judgment or any part of it being varied or revoked. The application for reconsideration is therefore refused.

Employment Judge Leith
Date: 6 January 2025

Sent to the parties on
Date: 6 January 2025