EMPLOYMENT TRIBUNALS

Claimant: Mr G Mwesigye

Respondent: AFE Recruitment Ltd R1
Booker Ltd t/a Best Food Logistics R2

JUDGMENT

The claimant's application dated **30 December 2024** for reconsideration of the judgment, sent to the parties on **16 December 2024** is refused as it has no reasonable prospects of success.

REASONS

1. Rules 68-70 of the Tribunal Rules provides as follows:

68. Principles
(1) The 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.
(2) A judgment under reconsideration may be confirmed, varied or revoked.
(3) If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the same conclusion..

69. Application for reconsideration
Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—
(a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or
(b) the date that the written reasons were sent, if these were sent separately..

70.— Process for reconsideration
(1) The Tribunal must consider any application made under rule 69 (application for reconsideration).
(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.
(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.
(4) If the application has not been refused under paragraph (2), the judgment must be

reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.
(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application.

2. The Tribunal has discretion to reconsider a judgment if it considers it in the interests of justice to do so. Rule 70(2) requires the judge to dismiss an 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 70.

3. When deciding what is "necessary in the interests of justice", it is important to have regard to the overriding objective to deal with cases fairly and justly, which includes: ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense.

4. 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.

5. 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.

6. Previous appellate decisions (even under earlier versions of the Rules) can provide helpful guidance to a judge, but they are not intended as a checklist. The individual circumstances of the particular application have to be considered on their own merits.

7. It is not necessary for the applicant to go as far as demonstrating that there were exceptional circumstances justifying reconsideration. There does, however, have to be a good enough justification to overcome the fact that, when issued, judgments are intended to be final (subject to appeal) and that there is therefore a significant difference between asking for a particular matter to be taken into account before judgment (even very late in the day) and after judgment.

8. As was stated in Ebury Partners Uk Limited v Mr M Acton Davis: [2023] EAT 40

> 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.

The application

9. On 30 December 2024, the Claimant made an application for reconsideration which was in time. It did not comply with the procedural requirements, because it was not copied to either respondent. The application fails on the merits in any event and so I do not need to address the procedural failing.

10. The application referred to the 2013 version of the rules. With effect from 6 January 2025, new rules came into force. However, nothing turns on this. For the purposes of my decision, there is no significant difference in the approach that I would have been required to take under the old rules, compared to the approach that I must take under the new rules. (For completeness, the application was referred to me for the first time on 8 January, but I was on leave at the time. I am dealing with it on 13 January, my first day back from leave.)

11. The application alleges that paragraphs 4, 5, 6 of the reasons for the judgment contain incorrect the findings of fact and/or fail to make correct the findings of fact. It erroneously suggests that I relied on what the Respondent stated. This is not the case. I reported what the Respondent stated in parentheses in paragraph 4 of the reasons. However, the first sentence of that paragraph is the important one. Nothing in the Claimant's application provides any evidence that he had, in fact, obtained an early conciliation certificate naming R2 as potential respondent by the time (on 19 November 2023), he presented the claim form.

12. The application alleges that I failed to identify the legislative purpose of Section 18A of the Employment Tribunals Act 1996 and/or incorrectly interpreted that legislation and/or the 2013 Rules. My opinion is that the law was set out correctly in the decision and reasons. However, in any event, if I am wrong about that, my decision is that any legal error in the original decision is not plain and obvious, and (therefore) if there is an error, it must be the type of error that should be challenged by way of appeal to the Employment Appeal Tribunal, rather than by reconsideration. See Ebury Partners Uk Limited v Mr M Acton Davis.

13. The Claimant states that only one certificate is necessary for the same

"matter". That is correct, provided the certificate names the same respondent(s) that is/are named as respondent(s) in the claim form. A single certificate can name more than one respondent. Alternatively, a claimant can obtain different certificates for different respondents. However, early conciliation certificate number R260493/23/41 refers only to AFE Recruitment, and not to Best Food Logistics or to Booker Ltd.

14. If the Claimant did have certificate number R157738/22/41 and if it named a potential respondent with a name close enough to Best Food Logistics or to Booker Ltd, and if it was issued on or before 19 November 2023 (and before the claim form was submitted to the Tribunal) then those facts would mean that the Tribunal had jurisdiction. The Tribunal has never requested or required that the Claimant obtain a new and different certificate naming R2. However, as per paragraph 10 of the reasons for the decision, my decision was that the Claimant had no reasonable prospect of showing that he had, in fact, obtained any early conciliation certificate (in relation to R2) by 19 November 2023.

15. To the extent that the Claimant believes that the strike out decision (striking out the claim against R2) was based on the Claimant's delays until 5 December 2024, that is not correct. The comments in the original reasons about what the Claimant did on 5 December 2024, and his delays prior to that date, were in the context of explaining why I rejected the application to strike out the claim against R1.

16. For the reasons stated above, having considered the application, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked, and the application is refused.

Approved by: **Employment Judge Quill**

Date: 13 January 2025

JUDGMENT SENT TO THE PARTIES ON

15 January 2025

FOR THE TRIBUNAL OFFICE