EMPLOYMENT TRIBUNALS

Claimant: **Mr J Piggott**

Respondent: **Bull & Company Limited**

JUDGMENT

The claimant's application dated 26th November 2024 for reconsideration of the judgment signed by the Employment Judge on 25th November 2024 is refused.

REASONS

1. I have treated the Claimant's email dated 26th November 2024 as an application for reconsideration. Whilst the email is not expressly stated in these terms, it is apparent that the Claimant seeks to obtain a different sum to that which was awarded. In these circumstances, having regard to the overriding objective, it is appropriate to treat this as an application for reconsideration.

2. The email of the 26th November 2024 was referred to me on the 2nd January 2025. I have sought to address the correspondence as soon as possible.

Reconsideration - The Law

3. 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 68).

4. Rule 70 of the 2024 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.

5. 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."

6. 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."

7. In common with all powers under the 2024 Rules, preliminary consideration under rule 70 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.

The Application

8. The application of 26th November is stated to be based upon the Claimant researching matters on the gov website and indicating that he is entitled to different sums. In particular, the Claimant identifies:

   a. A basic award of £4530

   b. Loss of earnings of £469

   c. 10% uplift for not following ACAS Code

   d. Loss of statutory rights £600

9. At the full hearing of the Claimant's claims, the Claimant was found to have been unfairly dismissed by reason of redundancy. The Respondent did not follow a basic procedure in dismissing the Claimant.

10. The Respondent business was in significant financial difficulty and subsequently ceased trading. I accepted the Respondent's case that had a fair procedure been followed, a fair dismissal would have occurred In any event.

11. The Claimant received sums by way of notice. It was calculated and agreed that had the consultation taken place, the Claimant would be entitled to a further weeks pay of £469.20 to reflect the time that it would have taken for the consultation to be carried out.

12. The basic position set out above has not been the subject of challenge in the application. I will deal with the points that are raised.

13. In respect of a basic award, it was an agreed fact that the Claimant received his redundancy pay in full. Section 122(4)(b) Employment Rights Act 1996 offsets the redundancy payment received against any potential basic award. The same method of calculation is used to calculate a redundancy payment as it is a basic award. Therefore, in the present case the correct basic award is zero and no award is made in this respect.

14. In respect of a potential uplift due to an unreasonable failure to follow the ACAS Code, it is right to note that this was found to be a dismissal by reason of redundancy. It is settled law that the ACAS Code does not apply to redundancy dismissals, this is provided for by the wording paragraph 1 of the Code. See also **Rentplus UK Limited v Coulson [2022] EAT 81** in which HHJ Taylor explored the scope of the Code.

15. In respect of an award to reflect a loss of statutory rights, no award was made in this respect as there was a 100% chance that a fair dismissal would have occurred in any event. Such a fair dismissal would have resulted in the Claimant lawfully losing his accrued statutory rights through a fair dismissal. It would not be appropriate to make such an award nor would it be just and equitable to make such an award under s.123 Employment Rights Act 1996.

16. Therefore, the sum of £469.20 contained within the original Judgment is correct and the application for reconsideration is refused.

Employment Judge Anderson

DATE 8th January 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON

16/01/2025

FOR THE TRIBUNAL OFFICE