EMPLOYMENT TRIBUNALS

Claimant: Mrs M Mwarowa

Respondent: Exceed Contracting Limited

JUDGMENT

The claimant's application dated 12 January 2025 for reconsideration of the judgment sent to the parties on 9 January 2025 is refused.

REASONS

Introduction

1. The claimant's application for reconsideration of the judgment dismissing her claims is contained in a two page document attached to an email dated 12 January 2025.

2. My judgment dismissing the claims and reasons for that judgment were given orally at the hearing on 6 January 2025. The written judgment, confirming the oral judgment given, was sent to the parties on 9 January 2025. No written reasons have been requested by the claimant or the respondent so none have been produced.

3. I am not setting out here the full reasons, which were given orally, for the judgment sent to the parties on 9 January 2025. However, to enable the reader of this judgment and reasons on reconsideration to better understand my reasons for refusing reconsideration of that judgment, I set out here a brief summary about what the case was about and why I decided what I did.

4. The claimant was employed by an umbrella company, the respondent, to work for a client, a local authority. She had obtained the work through an agency. That agency required her to be employed by an umbrella company to be given the assignment to work for the Council. The claimant earned less than she had expected to earn per hour while employed by the respondent, based on the agency's advert for the assignment, and did not receive as much as she had

expected to receive for business mileage, based on past experience when she had been employed directly by local authorities. The claimant brought a Tribunal claim claiming unauthorised deduction from wages in respect of an alleged shortfall in wages and a breach of contract claim in respect of non-payment of mileage expenses.

5. The issue in the complaint about unauthorised deduction from wages was whether the claimant was paid the amount due to her per hour. I concluded that she was, so her complaint failed. The claimant had not fully understood the arrangements she was working under. I found that, if she had read the documents she was given, she would have understood that she would not receive £17 per hour, which she claimed was due, but a lesser amount, after various deductions. I concluded that the payments made to her appeared to be in accordance with the contractual agreement as to pay and the information in the various documents sent to her.

6. In relation to business mileage, I concluded that the claimant was paid for business mileage as reported by the agency. These payments were subject to deductions for tax and national insurance contributions because the claimant had not made a claim to the respondent, as required by her contract, providing the information they would need to make the mileage payments tax free. I found the respondent was not in breach of contract in relation to payments for business mileage expenses.

The Law

7. The relevant law in relation to applications for reconsideration is now contained in the Employment Tribunal Procedure Rules 2024 ("the Rules").

8. 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).

9. Rule 70(1) provides that the Tribunal must consider any application made for reconsideration.

10. Rule 70(2) provides that, if the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked, the application must be refused.

11. 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."**

12. 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."**

13. In common with all powers under the Rules, consideration under rule 70(1) and (2) must be conducted in accordance with the overriding objective which appears in rule 3, 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 and my reasons for refusing it

14. Most of the points raised by the claimant are irrelevant to the reasons for my judgment.

15. A few of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence and made a determination. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in their favour.

16. The claimant raises some issues about fairness in the Tribunal process. One issue is that she asserts that she should have had a preliminary hearing before the final hearing. This would not be normal or proportionate in most cases about unauthorised deduction from wages and breach of contract. I conclude that not having a preliminary hearing does not make the final hearing unfair. I do not consider that any of the other procedural matters the claimant raises affected the fairness of the hearing such that there is any reasonable prospect that my decision might have been different.

17. The claimant raises (at point 12) an issue about being given a different version of the bundle of documents and being sent a copy of the right bundle during a break in the hearing. The claimant did not make any application for a postponement of the hearing although I asked her, at an early stage in the hearing, whether she was making such an application and she said she was not. The claimant had had an electronic bundle of documents for some considerable time before the hearing. The claimant said she had asked the respondent to provide a paper copy but they had said they would not do so because this had not been ordered by the Tribunal. The claimant said she could not afford to print a paper copy for herself. The claimant had not made an application to the Tribunal for an order for the respondent to provide a paper copy. The claimant was able, during the hearing, to access the electronic bundle on a device. It became apparent early during the claimant's evidence that she had different numbers on the pages of the bundle she was working from to those on my copy. To ensure that, when I was

asking the claimant questions about documents, she would be looking at the same pages as me, we had a break, during which the respondent sent the claimant, at my request, a further copy of the bundle with the same page numbers as my bundle. The claimant did not appear to have any difficulty, after the break, in finding the document I was asking about, by using this differently paginated version of the bundle.

18. For these reasons, I conclude that there is no reasonable prospect of the judgment being varied or revoked and I refuse the application for reconsideration.

Employment Judge Slater

Date: 22 January 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

23 January 2025

FOR THE TRIBUNAL OFFICE