EMPLOYMENT TRIBUNALS

Claimant: **Mr C. Pigott**

Respondent: **CDW Limited**

London Central

Employment Judge Goodman **1 April 2025**

RECONSIDERATION JUDGEMENT - RULE 70(2)

The claimant's application dated 7 January 2025 for reconsideration of judgment is dismissed because it has no prospect of success.

REASONS

1. By a reserved judgement with reasons sent to the parties on the 24th. December 2024, the employment tribunal dismissed claims of unfair dismissal and claims for unpaid commission whether in breach of contract or under the Employment Rights Act 1996. The Judgement with reasons runs to 19 pages, not including the appended list of issues.
2. In a 3 page letter from his solicitor, Arj Arul, to the tribunal dated 7 January 2025 the claimant seeks reconsideration of the claims for commission for the months of January and February 2024.
3. The respondent's solicitor wrote responding on 16 January, asserting over two pages that the judgment was correctly reasoned.
4. Both letters were referred to me on 16 January. I regret that sitting commitments, annual leave, and the need to find time to revisit properly the evidence, facts and submissions in this case have meant it has not been possible to write a decision before now.

Relevant Law

5. Under the Employment Tribunal Rules of Procedure 2024 a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 68 a Tribunal may reconsider any judgment "where it is necessary in the interests of justice to do so", and upon reconsideration the decision may be confirmed varied or revoked.

6. Rule 70 (1) provides that the tribunal must consider any application made under rule 69 - that is, an application made in time.

7. By rule 70 (2) "if the tribunal considers that there is no reasonable prospect of the judgement being varied or revoked... the application must be refused and the tribunal must inform the parties of the refusal".

8. By rule 70 (3) If there are some reasonable prospects of success, the tribunal is to invite the parties to make further representations and then conduct a hearing, unless it is clear from representations that it is not necessary in the interests of justice, when it can be decided on the papers.

9. Under the 2004 rules prescribed grounds for review (as reconsideration was then termed) were set out, plus a generic "interests of justice" provision, which was to be construed as being of the same type as the other grounds. The grounds were that a party did not receive notice of the hearing, or the decision was made in the absence of a party, or that new evidence had become available since the hearing, provided that its existence could not have been reasonably known of or foreseen at the time. **Ladd v Marshall (1954) EWCA Civ 1** set out the principles on which evidence could be admitted after the judgment: it could not have been obtained with reasonable diligence before the hearing; it would have an important influence on the outcome; the evidence was apparently credible. When the rules were remade in 2013, the Employment Appeal Tribunal confirmed in **Outasight VB Ltd v Brown UKEAT/0253/14/LA** that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review); the ET will generally apply the **Ladd v Marshall** criteria, although there is a residual discretion to permit further evidence not strictly meeting those criteria to be adduced if for a particular reason it is in the interests of justice to do so.

10. When making decisions about claims the tribunal must have regard to the overriding objective in rule 3 of the 2024 rules, 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, and seeking expense.

11. That is a public policy principle that there must be finality in litigation. Reconsiderations are a limited exception to that principle. Numerous cases illustrate this: in **Stevenson v Golden Wonder limited (1977) IRLR 474** it was said that the review (reconsideration) provisions were:

"not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before". In **Fforde v Black EAT 68/ 80** it was said review: "only applies in even more exceptional cases where something has gone radically wrong with the procedure involving the denial of natural justice or something of that order", and in **Reading v EMI Leisure Limited EAT 262/ 8,** refusing an application**:**, "when you boil down what is said on her behalf it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, "justice" means justice to both parties".

Discussion and Conclusion

12. The grounds for reconsideration are in essence (1) that the tribunal reached the wrong conclusion about whether GSNI debt should be removed from gross profit before ramping off (i.e. reducing) his commission (as the claimant argues) or after (respondent's calculation methodology) (2) the claimant was entitled to commission in February on gross profit from the DWP contract paid to the respondent in January. The claimant does not present new evidence. The respondent's case was that he was not entitled to be recognised on profit paid after 2 January 2024, by virtue of being removed from the contract at the customer's request as of 1 July 2023.

13. In order to understand the arguments and discern whether a mistake has been made – particularly with regard to the figures as an error of arithmetic could justify reconsideration in the interests of justice - I have reread the three witness statements as they relate to commission, checked my notes of cross examination, particularly as to Mr Mcginnety's figures, revisited those pages of the bundle containing the calculations and payments that are referred to in those statements, and I have reread my notes of the partes' oral submissions on the afternoon of 11th October, and the written submissions on commission submitted on 14th October, as the claimant wished to set out calculations in more detail now that all the evidence had been heard.

14. The task has not been easy, as the claimant's solicitor does not specifically address the arguments made by Mr Pickard, claimant's counsel.

15. On this methodology issue, paragraph 83 of the reasoned judgment makes clear that the distinction was recognised and the respondent's methodology preferred. The claimant seeks to reargue his case, which is not permitted in reconsideration.

16. On entitlement to commission in February, it was clear on the evidence that the claimant was not entitled to DWP commission once removed from the contract, but was granted a ramp off period for July to December. This did not envisage any entitlement to commission after January. The claimant at the time did not suggest he had entitlement to

DWP commission after 2 January. The current argument appears part of the fairness argument advanced at the hearing about commission being referable to the claimant's work on the contract, which was rejected in the judgment.

17. As noted in the judgment, the issues agreed at the start of the hearing evolved as the case was heard. That led to the permission to submit additional written submissions. Procedurally the claimant had a fair opportunity to clarify his case.

18. To conclude, the claimant's arguments do not show any reasonable prospect of success in reconsidering the judgment. The application is dismissed under rule 70(2).

Employment Judge Goodman

Date 1 April 2025

DECISION SENT TO THE PARTIES ON

11 April 2025

.....

.....

FOR THE TRIBUNAL OFFICE