EMPLOYMENT TRIBUNALS

Claimant: Ms Mandie Monroe

Respondent: Central Bedfordshire Council

JUDGMENT

The claimant's application dated for reconsideration of the judgment is refused as it has no reasonable prospects of success.

REASONS

Introduction

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. Under the current version of the rules, there is a single ground for reconsideration — namely, *"*where it is necessary in the interests of justice*".* In Outasight VB Ltd v Brown 2015 ICR D11, the EAT explained that the 2013 revision to the rules had not been intended to make it more easy or more difficult to succeed in a reconsideration application. Earlier versions of the rules had included specific examples of potential grounds for reconsideration; the omission of those specific examples did not mean that those things were no longer possible routes to reconsideration; an application relying on any of those arguments can still be made in reliance on the "interests of justice" ground.

7. 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.

8. 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.

9. 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.

Procedural Background

10. There was a final hearing between 11 and 14 September 2023. The Tribunal consisted of a judge and two non-legal members. Following the final hearing, a reserved judgment (with written reasons) was sent to the parties on 20 November 2023.

11. The employment judge who was part of that tribunal is not available. REJ Foxwell has therefore appointed me to make decisions that would otherwise have been made by that judge. In accordance with the Senior President of Tribunal's Practice Direction dated 29 October 2024, the initial decision required by (what is now) Rule 70(2) is to be made by a judge only (rather than the full panel.)

12. The email which attached the a reserved judgment (with written reasons), and the Tribunal's standard covering letter, was sent at 15:29 on 20 November 2023.

13. I do not understand their to be a dispute about whether the Claimant received it or not. However, and for avoidance of doubt, my finding is that she did. On 22 November 2023, at 07:36, she sent a direct reply to the Tribunal's 20 November email. The email commented on the contents of the written reasons. In particular, the Claimant stated that the document did not include written reasons for refusing the Claimant's amendment application. The email also asked about time limits for applying for reconsideration.

14. The Claimant's 22 November 2023 was not copied to the Respondent.

15. On 21 June 2024, at 07:29, the Claimant sent another email. Again, this was not copied to the Respondent. It stated that the Claimant had received an "acknowledgment". I assume that the Claimant means that she had received an auto-response to the 22 November 2023 email. The 21 June 2024 email asks why there had not been a substantive response to the 22 November email. It asserted that the 22 November email had been about "reconsideration and potential appeal" and it stated that the Claimant wished to appeal.

16. On 1 July 2024, the Claimant sent an email, not copied to the Respondent, which chased a reply to the 21 June email.

17. On 15 August 2024, HMCTS wrote to the Claimant to say that the 21 June and 1 July emails would not be considered until the Claimant complied with Rule 92 (of the 2013 rules).

18. On 22 August 2024, the Claimant replied to the 15 August letter, copying in the Respondent's representative. It is not necessary for me to quote from it extensively. Suffice it to say that it reiterates that what the Claimant was seeking was written reasons in relation to refusal of amendment application, and that the Claimant was referring to possible appeal.

19. On 13 September, a judge gave instructions. The Tribunal's 28 October 2024 letter was based on those instructions. The Claimant was asked to confirm that the earlier correspondence had been sent to the Respondent. In addition, the 1 July email was sent to the Respondent with a request for comments. If the Respondent replied, their response is not on file.

20. The Claimant did respond to the emails which attached the 28 October letter. On 3 November 2024, at 17:16, the Claimant sent a reply which repeated again that she was seeking written reasons for refusing to allow amendment. This was not copied to the Respondent.

21. At the same time (28 October 2024), the Claimant's correspondence was referred to EJ Bedeau for the first time. EJ Bedeau produced a document containing written reasons for the decision to refuse the amendment application. That was sent to the parties on 4 November 2024

22. On 25 November 2024, the Claimant sent an email at 19:42. This was a freestanding email, and not part of a chain of correspondence. It was not copied to the Respondent. In it the Claimant implied, by use of the past tense, that there had been an application for reconsideration prior to the 25 November email, but supplied no details of the date/time of the alleged application.

23. The email also expressed an intention to appeal and the opinion that the deadline would be 6 January 2025.

24. On 5 December 2024 at 18:22, the Claimant sent an email which referred to attachments. On 13 March 2025 at 13:49, the Claimant sent a chaser to that email. I proceed on the assumption that the attachments to the 13 March email are the same as those originally attached to the 5 December email. These were:
    24.1. DWP medical report
    24.2. The written application to amend the claim
    24.3. Additional reasons in support of amendment
    24.4. Invoice (8 August 2022)
    24.5. Letter from NHS dated 13 April 2022
    24.6. Application for reconsideration which bears the date 17 November 2024

25. The 13 March 2025 email referred to an email from the Claimant dated 4 November 2024. That was the date on which the written reasons were sent.
    25.1. The Tribunal file does not contain a printout of any email from the Claimant dated 4 November 2024, and staff have been unable to find such an email in the Tribunal's inbox.
    25.2. There is also no trace of an email dated 17 November 2024.

26. The Claimant sent further reminders on 27 March 2025 and 7 April 2025. The contents of those are noted, but do not add to the points already covered above. The 5 December 2024 email is the only one, following promulgation of the written reasons on 4 November 2024, that was copied to the Respondent.

Analysis and Conclusions

27. There is a distinction between, on the one hand, the judgment and written reasons produced after a final hearing, and, on the other hand, case management orders (and written reasons for those, if any) regarding decisions made during the final hearing.

28. An application submitted by email on 4 or 17 November 2024 (if there was such an application) would be in time as a reconsideration application of the judgment, provided that time started to run from 4 November 2024, the date on which the written reasons for the refusal of the amendment application was sent.

29. I do not think that time for an application to reconsider the judgment does run from 4 November 2024. My assessment is that the Claimant had 14 days from 20 November 2023 to apply for reconsideration. Thus, even assuming there was an application on 4 or 17 November 2024, it would have been more than 11 months out of time.

30. In appropriate circumstances, time to apply for reconsideration can be extended: Rule 5(7) of the 2024 Rules.

31. Where an application is made to add a new claim, by way of amendment, and that application is refused, the Tribunal is making a case management order, not issuing a judgment.

32. The Tribunal can "*vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice*". Rule 30.

33. This is a power to be exercised sparingly. The interests of justice usually require finality of decision-making (subject to appeal to a higher court) and the interests of justice are not best served by courts and tribunals being too quick to allow a party a second or third, etc, chance to get the case management orders that they prefer to have.

34. In Serco Ltd v Wells UKEAT/0330/15, (which was decided under the 2013 rules, but the principles remain the same), the EAT gave guidance that:
    34.1. It is desirable for there to be finality and certainty when judicial orders and decisions are made, meaning that challenges to an order should normally be pursued via an appeal.
    34.2. An employment judge or Tribunal should not usually vary their own case management orders, or those made by a different employment judge or Tribunal, unless:
        34.2.1. there has been a material change of circumstances, or
        34.2.2. if the order was based on a material omission or misstatement, or
        34.2.3. there is some other good reason - which goes beyond the mere fact alone that a party remains dissatisfied with the order, or that the second judge/tribunal would not have made the order in the first place – which is sufficient to depart from the principle that case management orders are intended to be final decisions.

35. In this case, the Tribunal made the case management order refusing the amendment application during the final hearing in September 2023, the application having been made in writing in August 2023. There has been no material change of circumstances since then, and the order was not based on a material omission or misstatement. The Tribunal was aware that the Claimant was a disabled person (as conceded by the Respondent) at the time it made its decision, and it was aware that the Claimant was arguing that there were good reasons for the timing of the application.

36. In all the circumstances, including that the final hearing continued, and judgment was issued, there is no other good reason for the case management order to be varied or revoked, and for the application to amend

to be revisited.

37. Where a tribunal issues what is intended to be the final liability judgment in a matter, and where there is an argument by a claimant that the Tribunal failed to deal with a particular complaint that actually had been included in the original claim form, then that argument would be a challenge to the judgment.

38. If I am wrong in my assessment that the Claimant is actually seeking to challenge a case management order (a challenge which I have rejected), and if, in fact, the Claimant's argument is that the judgment contains a error of law (because, she argues, it fails to deal with a complaint which was properly pleaded) then I do not think this is the type of (alleged) error of law that is suitable for review by way of reconsideration. It is true that, if the Tribunal comes to a view that its early judgment contained a clear error of law, then the interests of justice are likely to require that error to be corrected at the earliest and most cost effective stage (that is, at reconsideration, rather than full appeal to the Employment Appeal Tribunal). However, as made clear in Ebury, once the Tribunal has decided a question of law, which was controversial between the parties, and after both parties had the chance to have their say, it will not usually be appropriate for the Tribunal to change is decision on that question of law by way of reconsideration. Rather he public interest in finality is such that, if a party thinks that there is a legal error (over a debateable point), then that should be addressed by way of appeal, not reconsideration.

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

Approved by: **Employment Judge Quill**

Date: 22 April 2025

JUDGMENT SENT TO THE PARTIES ON

23 April 2025

FOR THE TRIBUNAL OFFICE