EMPLOYMENT TRIBUNALS

Claimant: Mrs T Ivanova

Respondent: Kapucin Ltd

JUDGMENT

The Claimant's application dated 9 December 2024 for reconsideration of the Partially Reserved Judgment and Reasons sent to the parties on 25 November 2024 is refused. There is no reasonable prospect of the original decision being varied or revoked beyond the corrections indicated below.

REASONS

Background

1. In an email dated 9 December 2024, the Claimant's representative, Mr Rentoul, wrote to the Employment Tribunal requesting a reconsideration of my Judgment and Reasons sent to the parties on 25 November 2024. The Judgment and Reasons is described as Partially Reserved in as far as I had not decided all of the complaints before me due to lack of time on the day of the hearing.

2. Mr Rentoul's application only belatedly came to my attention due to the intervening Christmas and New Year holidays and because of absence due to my part-time pattern of work. No reply to the request has been received from the Respondent.

The Tribunal Rules on Reconsideration

3. Under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 (which were at the date of the application still in force):

> *"(Rule) 70. Principles*
>
> *A 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. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*

…

72.— Process
(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations."

4. The Employment Appeal Tribunal has given guidance as to the nature of a request for reconsideration:

   a) Reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to re-argue matters in a different way or adopting points previously omitted;

   b) 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;

   c) It is not a means by which to have a second bite at the cherry, or is it 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;

   d) Tribunals have a wide discretion whether or not to order reconsideration. Where a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.

Conclusions

5. Having considered Mr Rentoul's application and annexes (containing documents that were previously before the hearing), beyond correcting a number of matters set out below, I find that it has no reasonable prospects of success.

6. Those corrections are as follows:

   a. The spelling of the Respondent's representative surname should be Anderssen;

   b. The figure quoted at paragraph 79 should be £2,668; and

   c. The figure quoted at paragraph 80 should be 224.

7. Mr Rentoul's has presented a very thorough deconstruction of my Judgment and Reasons. Indeed, with the deepest respect, it is overly pedantic and to

that extent it is disproportionate as well as unnecessary to address each point, some of which appear to simply be there for the sake of completeness.

8. However, the application does not raise matters which have a reasonable prospect of success. These matters were fully aired at the hearing at which evidence was taken, documents were considered, and submissions were made. It does appear that this is simply an attempt to reopen matters that have been already dealt with on the basis that Mr Rentoul simply does not agree with the findings and conclusions reached.

9. The matter was essentially a straightforward consideration of the Claimant's entitlement to recover unpaid annual leave and in what amount and whether she could recover unpaid pension contributions in respect of a workplace pension that she was never enrolled in. Unfortunately, again with the deepest respect, Mr Rentoul made the matter more complicated than it was.

10. I did not accept the Claimant's calculation of her entitlement to holiday pay as paragraph 89 of my Judgment indicates. Whilst the Claimant had put forward a schedule of what she alleged was owed, this did not appear to be an exact figure and was not supported by copies of wages slip for the relevant period.

11. I set out the burden of proof and the rationale for awarding the sum of £2,688. Doing the best I could and taking a proportionate view, I accepted the figure put forward by the Respondent by way of a concession. The other alternative was to award the Claimant nothing.

12. I would add that I did not accept Mr Rentoul's arguments as to the inadmissibility of document 10 from which this figure comes (at paragraphs 83 and 85 of my Judgment), which he simply repeats in his application. As I stated at paragraph 80, this calculation was also contained within the Respondent's Grounds of Resistance at paragraph 6 of that document.

13. With regard to the element of the complaint seeking an award in respect of pension contributions, this simply could not succeed for the reasons given at paragraphs 91 to 99 of my Judgment. As I indicated that was a matter that the Claimant needed to take up with The Pensions Regulator.

14. Indeed, if there was a failure to auto-enrol the Claimant in a workplace scheme that is firmly within the jurisdiction of The Pensions Regulator and not the Employment Tribunal.

15. I did not consider Mr Rentoul's letter of 2 October 2024 because as he identifies this was sent after the hearing. That is when both evidence and submissions had concluded and so it was not appropriate to do so. In any event, his letter and his subsequent research into the relevant decision date and calculation date add nothing material which would lead me to conclude that it gives rise to reasonable prospects of success in impacting upon the Judgment that I reached. I would add that it is indeed stretching the words within paragraph 16 of his letter to construe it as an application for costs as he suggests.

16. In conclusion, the Claimant's application has no reasonable prospect of success. It is not in the interests of justice to revoke or vary my decision (other than vary it to the extent set out above), there is no error in the application of the law or as to the award of compensation.

Employment Judge Tsamados
24 April 2025

Judgment sent to the parties on
29 April 2025