



EMPLOYMENT TRIBUNALS

Claimant: Mr J Mullings

Respondent: John Lewis PLC

Heard at: London Central (by CVP)

On: 24 April 29, 2025

Before: Employment Judge Henderson (sitting alone)

Representation

Claimant: In Person

Respondent: Mr S Wyeth (Counsel)

RECONSIDERATION JUDGMENT (RULE 68 TRIBUNAL PROCEDURE RULES 2024)

The claimant's application for reconsideration of the Strike Out Judgment of EJ Brown dated 4 November 2024 is refused. The Strike Out Order stands.

The late deposit payment (of £490) made by the claimant shall be returned by the Tribunal Financial Office.

REASONS

Introduction

1. This was a Public Preliminary Hearing to consider the claimant's application, made on 11 November 2024, for reconsideration of the Strike Out Judgment of EJ Brown dated 4 November 2024 (page 35). The relevant part of the judgment is as follows:

"The Claimant was Ordered to pay a deposit of £490 total, in respect of all the allegations in his claim, not later than 14 days from the date the Order was sent, following a preliminary hearing held on 17 April and 11 July 2024. The Order was sent to the Claimant on 18 July 2024. The Claimant should have paid the deposit by 1 August 2024. He did not pay the deposit until 2 August 2024. The Claimant was told, "If the deposit is not paid within that time, the complaint or response to which the order relates will

be struck out.” The Claimant failed to pay the deposit within 14 days of the order being sent to him. As the deposit Order related to all the allegations in his claim, his claim is therefore struck out under rule 39(4) of the Employment Tribunals Rules of Procedure 2013.”

2. The claimant asked for the reconsideration to be dealt with at a hearing to allow him a full opportunity to give his reasons as to why his case should be reinstated.

Conduct of the Hearing

3. The hearing was held using the Cloud Video Platform CVP and lasted just under 2 hours. The Tribunal was presented with an electronic bundle of documents (65 pages). This bundle included the Judgment and Reasons of EJ Brown which made the deposit Orders, which was dated 11 July 2024 and was sent to the parties on 18 July 2024.
4. I heard the claimant and the respondent's submissions, and the claimant had a short right of reply. We adjourned to allow me time to consider my decision.
5. I gave my Judgment with short form oral reasons at the hearing and suggested that I should also provide written Reasons.

Claimant's Submissions

6. The claimant referred to his request for reconsideration made on 11 November 2024 (at pages 36-37 of the Bundle)
7. He confirmed that he had received the Judgment making the deposit Orders on Thursday 18 July 2024. This referred to payment of the deposit being made within 14 days. The claimant noted that unlike other orders, no exact date was given for payment of the deposit.
8. The claimant said he had calculated the reference to “14 days” as not including Saturdays or Sundays. He said this was because the Tribunal was not open on those days (he had confirmed this with Tribunal clerks) – so he believed he needed to make the payment by 4 or 6 August 2024. The claimant also said that the payment had to be made by cheque or Postal Order, so he had assumed that Saturdays and Sundays were not included in the calculation as Banks do not open at weekends and Post Offices were not open on Sundays. Furthermore, the claimant did not have a cheque book (and would need to get one) and he was not familiar with making postal order payments.
9. The claimant did not seek any free legal advice on the deposit order, nor could he cite any specific authority or research carried out for his conclusions that weekends were not included, other than his practical points about the Tribunal and Banks/Post Offices being closed at weekends.
10. This argument was countered to some extent by the respondent's research in the claimant's local area: there were several banks with branches nearby and also the Broadway Post Office was open on Sunday, which was within 1.5 miles of the claimant's home.

11. The claimant also said that he did not have sufficient disposable income to make the deposit payment when he had received the Orders. He had to borrow some money from his mother. This meant that he only had sufficient funds in his bank account by end of July. He was (understandably) concerned about writing a cheque without funds available to cover the payment. The claimant also believed the reference to payment being made meant that the cheque had to be cleared by the relevant date. In fact, this assumption was incorrect.
12. As mentioned, the claimant confirmed that he had not sought any free legal advice on the content of or about the payment (or timing thereof) of the deposit order. He had spoken around 30 July-1 August 2024 to clerks at the Bristol Finance Office. The claimant said they told him that the exact date was not an issue and that one day would make no difference. The claimant did not specify the context of those statements by the clerks, which may have been made about the date of clearance of the cheque, rather than the date of actual payment.
13. The claimant accepted that it was not appropriate to take legal advice from the Tribunal administration staff. I also note that the wording of EJ Brown's Deposit Order of 11 July at page 30) which says that the deposit is to be paid "*not later than 14 days from the date this Order is sent, as a condition of being permitted to continue to advance that allegation*" [as listed in the Order at a-g]. The wording is clear. Timing is critical. It was not reasonable for the claimant to accept the Tribunal clerks' statements (if such were made) that the exact date was not important.
14. I explained to the claimant that the only appropriate test for reconsideration is whether it is in the interests of justice to do so and asked for his submissions on that point.
15. The claimant said that it was in interests of justice to revoke the Strike Out Judgment. The late payment of the deposit was a technicality and not indicative of the substance of the merits of his case. The claimant accepted that this was a hearing on the narrow issue of reconsideration but did spend some time complaining of the injustice he felt about his allegations of race/age/sex/religious discrimination in the way that the respondent shared his private information with third parties.

Respondent's Submissions

16. Mr Wyeth said that the relevant date for consideration was the date of payment of the deposit, not the date on which the cheque cleared.
17. Mr Wyeth also noted that the claimant had told EJ Brown at the Preliminary Hearing on 11 July 2024 that he had disposable income of £250. The Deposit Order required payment of £70 per allegation (there were 7 allegations (a-g)). The claimant could have paid for some of the allegations to proceed.
18. The claimant said (in his reply) that he had not realised he could pay in stages and believed had to pay in full if he wanted all to proceed. I accept that the subtlety of the wording of the Deposit Order may not be clear to a

litigant in person. The claimant may have been assisted if he had sought some legal advice on the wording of the Order.

19. Mr Wyeth pointed out that the claimant could have written to the Tribunal if he was having difficulty with paying the deposit in full. Again, the claimant said that he did not realise he could do that, and I accept this is not made clear in the Order.
20. I was referred to the case of **Outasight VB Ltd v Brown UKEAT/0253/14 (21 November 2014, unreported)** as the regards the test of the interests of justice, which included not only each party's interests but also the public interest in the desirability of finality in litigation.

Conclusions

21. Although the Deposit Order and Strike Out Order were made under the Tribunal Rules of Procedure 2013, I am required to apply the Tribunal Procedure Rules 2024 which came into force in January 2025. The relevant Rules are 68-71 for Reconsideration and Rule 40 for Deposit Orders and are the same in substance as the earlier 2013 Rules.
22. It is clear from the facts accepted by both parties that the Deposit Order requirements were not met.
23. The payment was received on 2 Aug and was out of time. The provisions of the Rules are clear. I accept the claimant's observation that would have been helpful to have an exact date given for payment of the Deposit. Unfortunately, the Judge making the Order does not know and does not control when the Order may be sent to the parties by the Tribunal Administration and so the calculation of the payment date has to be expressed in that way.
24. The claimant interpreted the 14 days to mean not including Saturdays and Sundays. There was no reference to "14 working days" in the Deposit Order. He concluded that because he could not make the payment on a Saturday or Sunday and because the clerks had confirmed that the Tribunal was closed, that this must be the case. He sought no free legal advice on this point and did not mention doing any research to check this. The claimant is an articulate, able and resourceful person who could have carried out internet research on deposit payments even if free legal advice was not readily available.
25. The claimant's interpretation of the reference to 14 days was incorrect. The due date was 1 August not 4 or 6 August 2024.
26. The date of clearance of the cheque for the payment is not relevant. I note an internal Tribunal email (not available to the parties) dated 2 August 2024. This records receipt of the deposit payment on that date and says that 15 days are allowed for the payment to clear. It may be that it was this practice that the Tribunal clerks to whom the claimant spoke, were referencing when they said that the date (for clearance) was not important.

27. Turning then to whether the claimant has satisfied the test that it is necessary in the interests of justice to reconsider and revoke the Strike Out Judgment of 4 November 2024.
28. Whilst I have sympathy for the claimant's position in misinterpreting the timing of the payment and his financial circumstances, I also accept the respondent's point that same rules on deposit payments apply to all claimants whatever their individual circumstances.
29. I note the decision in the **Outasight** case, reinforced by the Court of Appeal in **Ministry of Justice v Burton [2016] EWCA Civ 714**, that the Tribunal's discretion to reconsider judgments must be exercised in a principled way but taking account of the desirability of finality, which is in the public interest. The claimant has not shown that it is in the interests of justice to revoke the Strike Out Order.
30. The reconsideration application is refused and the Strike Out Order stands.

Approved by:

D Henderson
Employment Judge

29 April 2025

JUDGMENT SENT TO THE PARTIES ON

1 May 2025

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FOR THE TRIBUNAL OFFICE