Case No: 2407704/2023

EMPLOYMENT TRIBUNALS

Claimant: **Mr T Jackson**

Respondents: **B&M Retail Limited**

JUDGMENT

The claimant's application dated 15 April 2025 for reconsideration of the judgment sent to the parties on 31 March 2025 is refused and the judgment dated 11 March 2025 is confirmed.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment. That application is contained in an email dated 15 April 2025 which attaches a letter dated 10 April 2025. The application on the face of it is made outside the time limits for applying for reconsideration set out in Rule 69, 2024 Rules of Procedure. The application should have been made by 14 April 2025 at the latest.

The Law

2. 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).

3. Rule 70(2) of the 2024 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. 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."**

5. 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."**

6. In **Ebury Partners UK Limited v David [2023] EAT 40** the EAT put it this way in paragraph 24:

> **"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. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT."**

7. In common with all powers under the 2024 Rules, preliminary consideration under Rule 70 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

8. The majority of the points raised by the claimant about his mental health are points he has raised throughout the claim and are not new issues for consideration following the judgment given on 11 March 2025. The claimant's claim was struck out under Employment Tribunal Rule 38(1)(c) because the claimant has not complied with the Tribunal Order made on 30 January 2024 and nor with the revised timetable agreed by the parties and approved as a variation to the case management order by the Tribunal on 20 December 2024. The claimant in his application acknowledges that he has failed to comply with Tribunal orders. The claimant seeks to explain his failure to attend the hearing on the basis of his contention that his laptop was broken and has been sent away for repairs. The evidence provided by the claimant indicates the laptop was sent for repair on or around 14 April 2025, well after the hearing on 11 March 2025. In any event, this did not prevent the claimant from corresponding by email on 11 March 2025, 12 March 2025 and in April 2025; therefore the Tribunal does not accept that this supports the claimant's contention of having no knowledge of the hearing date or not being able to deal with his claim. The claimant's mental health was considered at the time of the judgment given on 11 March 2025.

Conclusion

9. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing of which the claimant had notice. The application for reconsideration is refused.

Employment Judge Fearon

Dated: 23 April 2025

Judgment sent to the parties on:
12 May 2025

……
For the Tribunal:

Notes