Case Number: 6013790/2024

EMPLOYMENT TRIBUNALS

Claimant: Mr. O. Olubori

Respondent: Jet2.com Limited

JUDGMENT ON RECONSIDERATION APPLICATION

The claimant's application for reconsideration of the reserved judgment sent to the parties on 23 April 2025 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. This is an application for a reconsideration of the judgment sent to the parties on 23 April 2025.

2. On 7 May 2025, the claimant sent two emails to the Tribunal, each with a different attachment, copying the respondent. The first email states "I am writing to formally request a reconsideration of the judgement issued in the above-reference case". The document attached to that email is headed "*Claimant's application for reconsideration under Rule 70 of the Employment Tribunal Rules*

of Procedure 2013" and is 37 pages in length. Pages 1-24 form a written application. Pages 25-37 are documents which the claimant appears to have omitted to include in the bundle for the public preliminary hearing on 14 April 2025. The second email states "Attached to this email is the claimant's skeleton argument, which outlines the key points and grounds for reconsideration. I kindly request that the Tribunal reviews these points in consideration of the application for a reconsideration of the judgment." The document attached to this second email is headed "*Claimant's skeleton argument for judgement reconsideration under Rule 70 of the Employment Tribunal Rules of Procedure 2013*". This document is 22 pages in length.

3. Although the claimant states that he makes this application pursuant to Rule 70 of the Employment Tribunal Rules of Procedure 2013, as new rules came into force on 6 January 2025, I have treated this as an application for reconsideration under Rule 69 of the Employment Tribunal Rules of Procedure 2024.

4. Rule 68(1) of the Employment Tribunal Rules 2024 ("the Rules") provides that "*the Tribunal may … on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so*".

5. Rule 69 of the Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. The claimant applied for reconsideration of the judgment on 7 May 2025, which is within time.

6. Rule 70(1) of the Rules provides that the Tribunal must consider any application made under Rule 69. Rule 70(2) provides that "*if the Tribunal considers that there is no reasonable prospect of the judgment being varied and revoked … the application must be refused and the Tribunal must inform the parties of the refusal*".

7. When considering a reconsideration application, it is necessary to take into account the overriding objective as set out at Rule 3 of the Rules.

8. The claimant lodged an ET1 claim form on 3 October 2024. A private preliminary hearing for case management took place before Employment Judge Edmonds on 17 March 2025 at which the claims that the claimant was seeking to bring were identified. There was discussion about whether the allegations in fact formed part of the claimant's pleaded claim, and this was recorded in the case summary of that hearing. A public preliminary hearing was listed for 14 April 2025 to determine various matters: whether the allegations set out in the draft list of issues formed part of the claimant's pleaded claim; whether the claimant should be permitted to amend his claim to bring those allegations; whether all or any part of the claim should be struck out and/or made subject to a deposit order; whether it would be just and equitable to extend time, the claim form on the face of it being out of time as the last act of

discrimination relied on by the claimant was stated to be his dismissal on 24 April 2024.

9. The case came before me for public preliminary hearing on 14 April 2025. I found that no claim of race discrimination was brought in the original claim form. I refused the application to amend and found that the remaining claim was not one which the Tribunal has jurisdiction to hear. It was therefore struck out for having no reasonable prospect of success.

10. I have considered the claimant's application for reconsideration in detail, as set out in the two documents provided to the Tribunal. The application for reconsideration appears to be made on the following broad grounds:

    a. That there is further evidence, not presented at the public Preliminary Hearing on 14 April 2025, which the claimant wishes the Tribunal to consider (documents he refers to as S.D. 25-37).
    b. That there was inadequate consideration of the claimant's status as a litigant in person, which contributed to procedural unfairness.
    c. That the Tribunal failed to properly exercise its discretion and misapplied the law. A number of matters are raised in this regard, which are labelled as: misapplication of the ***Selkent*** principles in refusing amendment; extension of time; opposition to a strike-out or deposit orders; failure to properly exercise discretion under section 123(1)(b) of the Equality Act; erroneous conclusion on the absence of a continuing act; overly rigid approach to pleadings contrary to established jurisprudence.

11. There is some overlap between these grounds. I deal with each of these points below:

12. In relation to ground (a), new evidence not available to the Tribunal at the time of its judgment may justify reconsideration in the interests of justice. The underlying principles to be applied are those established in ***Ladd v Marshall*** 1954 All ER 745 CA, namely:
    a. That the evidence could not have been obtained with reasonable diligence for use at the original hearing.
    b. That the evidence is relevant and would probably have had an important influence on the hearing.
    c. That the evidence is apparently credible.

13. There appear to be three aspects to the further evidence presented by the claimant as part of his reconsideration application: firstly, documents relating to his access to university facilities and the timing of his re-enrolment on his university course (pages S.D. 25-30). These documents are dated between 12 June and 28 October 2024 and it is apparent these existed on 14 April 2025, the date of the public preliminary hearing. Evidence was given by the claimant at that hearing as to the reasons he asserts for delay in lodging his claim, which

included issues with his accommodation, concerns about currency fluctuations affecting Nigerian students and the work required for his PhD. No explanation is given for why these particular documents could not have been produced for use at the hearing on 14 April 2025 when other, similar, documents were.

14. Secondly, emails between the claimant and respondent dated between 16 March 2024 and 23 April 2024 (pages S.D. 32-37). It is apparent that these documents existed at the time of hearing on 14 April 2025. Evidence as to the communications between the respondent and claimant during that time were presented at the hearing on 14 April 2025. No explanation is given for why these could not have been produced for use at that hearing when other, similar, documents were.

15. Thirdly, a letter from Engleton House Surgery dated 7 May 2025 (page S.D. 31). This is dated after the 14 April 2025 hearing. The letter however summarises the claimant's GP consultations between 25 June 2024 and 4 February 2025, stating that the claimant presented with Depressed Mood on 25 June 2024, and commenced Sertraline on that day. The letter confirms that the dosage of Sertraline was increased in September 2024 and November 2024. The entry on 12 December 2024 states that the claimant "*mentioned to the GP that he was still troubled with slight lack of motivation and low mood… he mentioned he had been doing some reading about bupropion and would like to try sertraline and bupropion in combination. As this needed specialist opinion, and advice and guidance email was sent to Psychiatry*". The letter records that the response from Psychiatry was that if the claimant "*was struggling with depression or anxiety then we could increase the sertraline to 200mg daily. We wrote to Mr Olubori with this advice, but he states that he did not want to become dependent on the meds, so decided not to take us up on the offer*". The letter also records that the claimant commenced short-term medication for sleeplessness on 4 February 2025. In view of the dates of the GP consultations and prescriptions recorded in this letter, these are matters of which the claimant was evidently aware at the time of the Tribunal hearing. The claimant was able to contact his GP and obtain such a letter within some three weeks of the public preliminary hearing on 14 April 2025. There is no explanation for why he did not do so in advance of that hearing. I conclude that the evidence was available and could have been obtained with reasonable diligence for use at the original hearing. It is asserted by the claimant at paragraphs 32-41 of the first document of his reconsideration application that he has PTSD, and that this directly affected his ability to engage with the Tribunal process in a timely manner. He asserts that there is unchallenged expert evidence that the claimant was incapacitated by PTSD during the relevant period and still is, which the Tribunal failed to take into account. The letter from the claimant's GP does not state that he has PTSD, nor was there any medical evidence to that effect before the Tribunal on 14 April 2025. Whilst the claim form stated that the claimant had been prescribed anti-depressant medication since June 2024 to address mental health challenges caused by his situation, there was no mention of a diagnosis of PTSD, mental health challenges, or medication, in the claimant's evidence to the Tribunal, although the Case Management Order of Employment Judge Edmonds specifically directed that any witness statement should explain

why the claimant's claim was not submitted to the Tribunal at an earlier date (CMO 6.1). There was no evidence of health issues in the claimant's four-page statement, nor in the documents he provided in the hearing bundle.

16. Applying the principles established in *Ladd v Marshall,* I find that the evidence now put forward by the claimant fails the first test. With the exception of the letter dated 7 May 2025, the documents at pages 25-37 existed and appear to have been in the claimant's possession or reasonably obtainable by the claimant ahead of the public preliminary hearing on 14 April 2025. The letter of 7 May 2025 is dated after the date of that hearing, however the information contained in it was available before 14 April 2025 and it is apparent that a letter to the same effect could have been obtained from the claimant's GP with reasonable diligence prior to 14 April 2025. Even if the first test were met - and it is not - the new evidence fails on the second test: it is not relevant and would not have had an important influence on the hearing in any event, in view of the findings made by the Tribunal, particularly at paragraphs 30-35 of the judgment, as to the claimant's capability to set out the factual basis of his claim both at the time the claim was submitted in October 2024 and indeed earlier in June 2024. On the basis of the evidence considered and the conclusions reached by the Tribunal that the claimant was able to engage in detailed correspondence with the respondent, obtain legal advice, undertake legal research and liaise with ACAS during the relevant period, consideration of medical evidence that he had presented with Depressed Mood and been prescribed Sertraline on 25 June 2024 could not therefore have made any difference to those conclusions.

17. It is a fundamental requirement of justice that there is finality and certainty in litigation. I do not find that the judgment in this case should be reconsidered by virtue of the purported new evidence, as this does not pass the tests established in *Ladd v Marshall*. I do not consider that it is in the interests of justice to allow the claimant a second attempt to litigate because he did not bring to the Tribunal's attention evidence that was available at the time of the original hearing. For the reasons set out above, I do not consider that this evidence would have changed the outcome in any event.

18. In relation to ground (b), the claimant as a litigant in person was given appropriate assistance and support throughout the hearing, and the Tribunal was careful to take steps throughout to ensure that the parties were on an equal footing in line with the overriding objective. This included the claimant being asked at the public preliminary hearing whether he required any specific adjustments to be put in place to facilitate his participation in the hearing. He said that none were required. The Case Management Order of Employment Judge Edmonds stated that the claimant could produce a witness statement for the public preliminary hearing and it was explained what that statement should address. The claimant had been able to comply with this order and had produced a four-page statement setting out a number of reasons he says his claim was not brought in time. He had also produced a number of documents which he referred the Tribunal to in the course of his evidence and in his closing submissions. I do not therefore consider that it is in the interests of justice to reconsider the judgment on this ground.

19. In relation to ground (c), the other matters raised in the reconsideration application are all matters raised at the hearing and considered in reaching the conclusion set out in the reserved judgment. The claimant's application for reconsideration seeks to challenge the facts found and conclusions reached by the Tribunal and to argue that the Tribunal misapplied the law and reached flawed conclusions. A request for reconsideration is not an opportunity for a party to seek to re-litigate matters: it does not entitle a party who is unhappy with or disagrees with the decision to re-open issues that were determined, nor is it an opportunity to re-argue points that were or ought to have been raised at the public preliminary hearing. The claimant has had an opportunity to put forward arguments in his case and to give evidence as to the reasons for the late submission of his claim. Case law has established that if a matter has been ventilated and properly argued, any error of law, such as that asserted by the claimant here, falls to be corrected on appeal, not by review (*Trimble v Supertravel Ltd* 1982 ICR 440 EAT).

20. Having carefully considered all of the points made by the claimant, I am satisfied that there is no reasonable prospect of the decision being varied or revoked. I am not satisfied that it would be in the interests of justice to reconsider the judgment in this case. The claimant's application for reconsideration is therefore refused.

Approved by:

Employment Judge Power

30 May 2025

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/