Case Number: 6001548/2024

EMPLOYMENT TRIBUNALS

Claimant: B Sims
Respondent: University Hospitals Plymouth, NHS Trust

RECONSIDERATION

The Claimant's application dated 23 March 2025 for reconsideration of the judgment sent to the parties on 8 March 2025 is refused and the judgment is confirmed.

REASONS

Introduction and Background

1. The Claimant made an application to reconsider the Judgment that was dated 2 February 2025 and sent to the parties on 8 March 2025. The Claimant lodged that request to the tribunal via email on 23 March 2025.

2. The judgment related to an application made by the respondent to strike out the entirety of the claim at a preliminary hearing under rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 (the Rules), for having no reasonable prospect of success.

3. The conclusions of that judgment are set out in paragraphs 28 to 30 of the same document. The reasons given by the claimant in response to the application to strike out are set out in paragraphs 19 and 20 of that judgment. This is summarised below for ease of reference:

    a. *The Claimant found that there were problems using the online (Employment Tribunal) portal, both in terms of submitting documents and receiving them during the process. More generally, there have been problems relating to communication with the Tribunal. It was clarified during the hearing that the Claimant was referring here to the submission of the ET1 Form and then correspondence and documentation submission during and after 7th April 2024. For example, the Claimant explained that there "was a problem with*

the Sunday [7th April], because there was no one to speak to and I didn't speak to anyone until the next day".

b. *The full time was needed between the date of termination in November 2023 and the lodging of the Claims in April for the Claimant to try and remember what had happened, what the experience was that led to that termination and what they wanted to say. In effect, I interpret this to mean the Claimant needed the full amount of time to consider, prepare, concentrate and then deliver the Claims;*
c. *The Claimant's view was that the 7th April deadline was acceptable and this is because it was on a weekend day – this was still within the deadline. The Claimant checked this with the Tribunal office after the event and considered that they had agreed this was acceptable as well;*
d. *The Claimant found they had not received, or had missed, various correspondence after 7th April;*
e. *There was a delay communicating with ACAS during the period between 11th November and 4th April 2024;*
f. *The Claimant found the process distressing at times and during a period in March, when communicating with ACAS, was suffering from a virus.*

20. On further questions to the Claimant, they confirmed that they had requested general, but not specific, information from ACAS, relating to the date by which the Claims needed to be lodged. It was established that the Claimant had not contacted the Tribunal prior to submission of the Claims. The Claimant also confirmed that they did not benefit from Union advice at the time the Claims were submitted.

4. The claimant's reconsideration request is also set out below, to the extent it relates specifically to the request for that reconsideration:

This is based on several factors I tried to express which contributed to the delays.

A significant part of the delays were due to the ET processes itself, technical and administrative, and the timing of these.

I acknowledge that there was also an element of time delay on my part separately. This was mainly due to a significant lack of expertise to assist me in direction and focus. Particularly when faced with the level of legal representation by the Respondents. I understand the need for timeframes or deadlines, but from someone in my position, even if I have another few weeks or months to complete etc, my difficulties would still be the same.

I have felt completely out of my depths with the whole process beginning with ACAS.

Despite some procedural advice from ACAS, in reality it has been a very limiting and restrictive service from my experience.

The Law

5. Rule 68(1) of the Employment Tribunal Procedure Rules 2024 (the 2024 Rules) states that:

   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.

6. Rule 69 of the Employment Tribunal Procedure Rules 2024 states that:

   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.

7. As already stated above, there is a single "interests of justice" test set out in Rule 68 of the 2024 Rules. Where I refer to case law, it will be pursuant to the Employment Tribunal Rules of Procedure 2013, albeit they are applicable to the simplification provided for by Rule 68 (noting *Outasight VB Ltd v Brown 2015 ICR D11, EAT).*

8. Rule 70 of the 2024 Rules sets out the procedure that an employment tribunal will follow upon receipt of an application for reconsideration. If the tribunal considers that there is no reasonable prospect of the original decision being varied or revoked, the application will be refused and the tribunal will inform the parties accordingly (rule 70(2) of the 2024 Rules).

9. There is a structured and mandatory process for the consideration of applications for reconsideration (*TW White & Sons Ltd v White EAT 0022/21*). The employment judge must first take the rule 70(2) 2024 Rules decision first and decide whether there are reasonable prospects of the original decision being varied or revoked. I am conscious here to bear in mind that the Respondent should not be put to the

time and expense of responding to this application if I do not consider there are reasonable prospects of the judgment being varied or revoked.

10. I am also mindful that whilst I have broad discretion in my decision to reconsider a judgment and whether this is appropriate, that has to be exercised judicially. I note *Outasight VB Ltd v Brown 2015 ICR D11, EAT*, which I will include here as it is a an important reminder that judicially *'means having regard not only to the interests of the party seeking the review or 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'.*

11. Whilst it is not completely analogous and there are some differences in the specific circumstances of this case, the case of *Redding v EMI Leisure Ltd EAT 262/81* has some relevance here: in this instance the claimant appealed against an employment tribunal's rejection of their application for a review of its judgment. They argued that it was in the interests of justice to do so because they had not understood the case against them and had failed to do themselves justice when presenting their claim. The EAT observed that: '*When you boil down what is said on [the claimant's] behalf, it really comes down to this: that she did not do herself justice at the hearing, so justice requires that there should be a second hearing so that she may. Now, justice means justice to both parties. It is not said, and, as we see it, cannot be said that any conduct of the case by the employers here caused [the claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation.'*

12. The 2004 Tribunal Rules provided that a decision could be reviewed on the ground that it 'was wrongly made as a result of an administrative error' (*Sodexho Ltd v Gibbons 2005 ICR 1647, EAT).*

Decision

13. I can summarise the reasons provided by the claimant for the reconsideration as being:

    a. Delays to the Employment Tribunal process (technical and administrative) and the timings of these; and
    b. Delay by the claimant, due to primarily a lack of expertise.

14. Both of these points were explored in some length at the preliminary hearing. It was established by both parties during the hearing and supported by the hearing bundle that any delay caused by the Employment Tribunal occurred around and

after the lodging of the ET1 form, noting paragraph 19(a) of the judgment. The explanation regarding the timings on the lodging of the ET1 claim and the rationale was also set out in the Introduction to the judgment.

15. I cannot see any additional or new evidence provided by the claimant here that was not already explored at the time of the hearing. Neither can I find any specific administrative error on the part of the Tribunal. In short, the position set out by the claimant is the same as explained at the time of the hearing.

16. Dealing then with part (b) of the reconsideration request made by the claimant, which relates to a lack of expertise. I am very mindful of the overriding objective and ensuring that both parties are on equal footing and seeking flexibility. Whilst the claimant was not represented, much time was taken at the preliminary hearing exploring reasons as to why the claimant did not lodge the claim form in time. (see paragraph 29 of the judgment).

Conclusion

1. I must consider the process set out in Rule 70 of the 2024 Rules - whether the tribunal considers whether there is no reasonable prospect of the original decision being varied or revoked.

2. I cannot see that a delay caused by a lack of expertise or understanding of the employment tribunal system can, in itself be a reason to grant a reconsideration, having in mind all of the law outlined above.

3. I need to balance the interests of both parties and consider the importance of their being finality to the proceedings in question (*Outasight VB Ltd v Brown 2015 ICR D11, EAT).* I cannot find any new evidence, error or any other reason with which to reconsider this judgment.

4. I have considered carefully *Stevenson v Golden Wonder Ltd 1977 IRLR 474, EAT*, that the reasons provided in the application for reconsideration are the same, or similarly worded, reasons and evidence already fully explored in the preliminary hearing.

5. I do not find that there is a reasonable prospect of the original decision being varied or revoked. I therefore do not need to consider this application further as this part of the Rule 70 test has not been met.

6. The request for reconsideration is refused and the judgment is confirmed.

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Approved by

Employment Judge Winfield
Date: 27 May 2025

Sent to the parties on
11 June 2025

Jade Lobb
For the Tribunal Office

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