



EMPLOYMENT TRIBUNALS

Claimant: Mr O Ogunbayo

Respondent: Royal Mail Group Ltd

JUDGMENT

The claimant's application dated **27 April 2023** for reconsideration of the reserved judgment which was sent to the parties on **13 April 2023** is refused.

REASONS

1. After a 3 hour hearing on 9 February 2023, and following deliberations in chambers, the Employment Tribunal promulgated a reserved judgment on 13 April 2023 in respect of the preliminary issues of whether the claimant should be allowed to amend his claim, whether his claimant's claim should be struck out as an abuse of process or on the grounds that it had no real prospect of success, and whether the claim should be made the subject of a deposit order on the ground that it has little reasonable prospect of success (**The Judgment**).
2. On 27 April 2023 the Tribunal received an application from the claimant for reconsideration of the Judgment.
3. Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides an Employment Tribunal with a general power to reconsider any judgment where it is necessary in the interests of justice to do so. This power can be exercised either on the Tribunal's own initiative or on the application of a party. Rules 71 to 73 set out the procedure by which the power is to be exercised.
4. Rule 70 provides a single ground for reconsideration. That ground is where it is necessary to do so in the interests of justice. This does not mean that in every case where a litigant is unsuccessful, they are automatically entitled to reconsideration. Instead, a Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly, and the Tribunal should be guided by the common law principles of natural justice and fairness.

5. Rule 70 provides the Tribunal with a general power to reconsider any judgment where necessary in the interests of justice to do so. A judgment is defined in Rule 1(3)(b) as a decision made at any stage of the proceedings which (amongst other things) finally determines the claim. It is not open to a party to seek reconsideration of the reasons for the judgment as opposed to the judgment itself.
6. Tribunals have a broad discretion but that must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also the interests of the other party to the litigation and the public interest in the finality of litigation (**Outsight VB Ltd v Brown 2015 ICR D11 EAT**).
7. An application for reconsideration must be presented in writing and copied to all other parties within 14 days of the date upon which the written record of the decision which is the subject of the reconsideration application was sent to the parties, or if a request for written reasons was made, within 14 days of the date the written reasons were sent out, if later.
8. In this case, the Judgment was promulgated on 13 April 2023. It follows that the claimant made the reconsideration application in time. Although the claimant does not appear to have complied with the procedural requirement to send a copy of the application to the respondent under rule 71 of the 2013 rules, the Tribunal can waive that requirement, and has exercised its discretion to waive that requirement in this case. The Tribunal therefore has jurisdiction to consider the reconsideration application.
9. Rule 72 of the 2013 rules sets out the procedure that an employment tribunal must follow upon receipt of an application for reconsideration. Firstly, the application is, where possible, put before the Employment Judge who decided the case. If the Employment Judge 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.
10. If the application is not refused, the Tribunal will send a notice to the parties setting a time limit for any response to the application by the other parties, and seeking the parties' views on whether the application can be determined without a hearing. The matter will then proceed to a hearing unless the Employment Judge considers – having regard to any response to the application – 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.
11. The procedure does not allow for the Employment Judge to decide that a hearing is necessary before they take the decision under Rule 72(1) as to whether there is no reasonable prospect of the original decision being varied or revoked. This aspect of the procedure provides an important protection for the party opposing the application, in that the other party should not be put to the time and expense involved in responding to the application if the Employment Judge considers that there are no reasonable prospects of the Judgment being varied or revoked.

12. The claimant says that the Judgment should be reconsidered because he is of the opinion that although Employment Judge Tegerdine understood his claim, she did not understand his explanation completely. He says that he did not realise the ET1 form was an integral part of his case and that he should have provided more details. The claimant also says that he was not able to evidence his complaint appropriately because the respondent did not include a bundle of documents relating to his dismissal in the bundle for the hearing on 9 May 2023.
13. The claimant says in his reconsideration application that his complaints are:
 - Race discrimination detriment 2019;
 - Unpaid wages and holidays in 2015;
 - Complaints of victimisation in 2018;
 - Complaints of victimisation and dismissal in 2019;
 - Refusal to comply with its own process and agree procedures under the bullying and harassment guidelines in 2019;
 - By the respondent upholding a fraudulent investigation and associating him with an allegation of sexual harassment, which is an act of victimisation in 2022.

However, although the claimant was given the opportunity to clarify and explain his complaints during the hearing, he gave no indication that he wanted to pursue any of these complaints as part of his claim at the hearing on 9 February 2023.

14. The claimant's reconsideration request does not explain what the additional documents he refers to were, why he didn't send them to the Tribunal in advance of the hearing himself if he believed it was important for the Tribunal to have them for the purposes of the preliminary hearing, and he does not explain why or how they were relevant to the matters which were considered at the preliminary hearing.
15. The Tribunal reached its conclusions based on the submissions which were made on behalf of both parties at the hearing on 9 February 2023, and the documents which was presented to the Tribunal by the parties for the purpose of the hearing. Employment Judge Tegerdine is satisfied that she gave proper consideration to the documents which were put before her by both parties, to the representations which were made by the claimant during the hearing, and that she understood the complaints he wanted to bring.
16. It is not in the interests of justice that the claimant should be given a second bite of the cherry simply because he failed to adduce all the information which he believed was relevant to the matters which were being considered at the original hearing. A reconsideration application is not an opportunity for the parties to re-argue their case, and a party's failure to raise a particular point does not normally constitute grounds for review.
17. Having regard not only to the interests of the claimant, but also to the respondent's interests and the public interest requirement that there should, so far as possible, be finality of litigation, nothing the claimant says in the reconsideration application persuades the Tribunal that there is any reasonable

prospect of the claimant prevailing upon the Tribunal at a reconsideration hearing that the Tribunal's Judgment was incorrect.

18. The Tribunal is therefore satisfied that there is no reasonable prospect of the Judgment or any part of it being varied or revoked. The reconsideration application is therefore refused.

Employment Judge Tegerdine

Date 4 May 2023

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