



EMPLOYMENT TRIBUNALS

Appellant: Shiva Limited

Respondent: Ms S Boyd, Health & Safety Executive

APPLICATION

The appellant's application dated 3 December for a reconsideration of the decision sent to the parties on 20 November 2020 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. In a decision sent to parties on 20 November 2020, the Employment Tribunal refused the appellant's application for a stay of proceedings and provided reasons.
2. In an email to the Tribunal dated 3 December 2020, the appellant applied for a reconsideration of the Tribunal decision. The contents of the appellant's email are not repeated here. The appellant does not specify which basis for reconsideration it is relying upon. The Tribunal proceeded on the basis that the application was under Rule 70.
3. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides:
"A 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. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."
4. With the email seeking reconsideration, the appellant included a copy of the reasons in which the appellant has inserted additional comments. The Tribunal has considered all the material provided by the appellant and also conducted its own review of its decision and reasons of 20 November 2020.
5. The material provided by the appellant is largely a repetition of the arguments already presented to the Tribunal and rejected. The appellant comments on the unusual nature of interplay between the criminal law and the civil law in this area. Whilst that may be so, the provisions are in existence and fall to be applied where appropriate by the Tribunal.

6. The Tribunal is criticised for failing to have regard to the features of this case “that starkly distinguish it from the case law his Order relies upon”. This is not correct. The case law relied upon is set out in full and while the quotations might be criticised for being too lengthy, what they do show is that the exact nature of the proceedings in the authority is identified. This leads into the second criticism of the reasoning identified by the appellant where it says “... the Judge failed to carry out the balancing exercise necessary to do justice as between the parties, notably failing to adequately heed the fact that in this case the references to ‘the defendant’ in the case law do not apply.” This also is not correct. The Tribunal sought to carry out the balancing exercise on the basis of the factors in this case and was fully aware of the context in which the authorities arose.

7. In relation to the comments inserted into the reasoning, the appellant makes the point that the prohibition notice remains in effect since its issue so that the only party prejudiced is the appellant. This ignores the fact that it is the appellant’s appeal. It may have had some basis for lodging the appeal but whether it does nor not, it is for the respondent to lead in evidence. That being so, it will be for the appellant to seek to lead contrary evidence or not, as it considers appropriate. This also leads into the comments made by the appellant about section 20 of the 1974 Act. The powers under the Act have been exercised and the appellant says “To the extent that these powers have been exercised and to the extent they have been responded to by the appellant they were a matter for the appellant’s own judgment as to how far to submit them.” Exactly the same considerations apply to the appellant in the appeal and this is the essence of the reasons for the decision which was issued on 20 November 2020.

8. In paragraphs 17-22, the Tribunal has sought to carry out the balancing exercise and in doing so has sought to indicate the relative significance of any particular factor in the case.

9. The Tribunal considers that there are no grounds put forward by the appellant for revisiting the decision within the scope of its powers of reconsideration under Rule 70 of the Employment Tribunal Rules of Procedure 2013. In relation to its own review, the Tribunal has been unable to identify any material which would permit it to accede to the appellant’s request to revoke its decision.

10. The claimant’s application for reconsideration of the decision sent to the parties on 20 November 2020 is refused because there is no reasonable prospect of the original decision of the Tribunal being varied or revoked.

Employment Judge Truscott QC

Date: 9 December 2020