



EMPLOYMENT TRIBUNALS

Claimant: Mr G Stan

Respondent: Hermes Parcelnet Limited

JUDGMENT FOLLOWING RECONSIDERATION APPLICATION

The claimant's applications dated 27 September 2023 and 4 October 2023 for a reconsideration of the judgment sent to the parties on **4 October** are refused.

REASONS

1. On 26 September 2023 I gave oral judgment and reasons in this case. I explained at the hearing that a written judgment would be sent. The Claimant requested that it include my written reasons. Written judgment and reasons were sent to the parties on 4 October 2023.
2. By several emails the Claimant has written to the Tribunal after the judgment. I take these emails to be an application for reconsideration, see Rule 70 of the Tribunal Rules 2012.
3. If the Claimant considers that I made an error of law in the decision, then he can appeal. Information about this should have been sent to him with the written judgment.

Legal Principles on Reconsideration

4. Under Rule 70 of the Tribunal Rules a party can apply for a reconsideration of any judgment where it is 'necessary in the interests of justice' to do so.
5. The first stage under Rule 72 is that I consider whether there are any reasonably prospects of the decision being varied or revoked.
6. The discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way. In particular, the courts have emphasised the importance of the finality of litigation (*Flint v Eastern Electricity Board* [1975] ICR 395): parties should not normally be allowed a 'second bite' at the litigation 'cherry'. It is not generally in the interests of justice to seek a further argument on the facts.

7. If a party wants to refer to new evidence, then the principle of finality must be balanced against the needs of justice in the individual case. The principles as to when fresh evidence can be considered were set out in *Ladd v Marshall* [1954] EWCA Civ 1. First, it must be shown that the new evidence could not have been obtained with reasonable diligence for the original hearing.

Decision on the Applications

8. In his email of 27 September 2023, the Claimant makes several points, which I deal with in turn.
 - 8.1. First that I acted in bad faith. In litigation one party loses and one party wins. This is inevitable. Just because a judge decides for the other party does not show bad faith. Indeed I criticised the Respondent's conduct in this case. I reject this allegation.
 - 8.2. Second, the Claimant refers to the evidence and suggests I should have reached a different decision. He suggests that I have favoured some parts of the evidence over others. This is what a judge must sometimes do in order to decide the facts. The Claimant seeks to re-litigate the case. The interests of justice in finality do not allow this.
 - 8.3. Third, the Claimant seeks to introduce new evidence. He has not shown why this was not reasonably available to him to produce at the hearing: he produced it very quickly after the hearing. The legal principles therefore do not allow me to consider such evidence.
 - 8.4. Fourth, the Claimant requires that my questioning of a witness be included in the written reasons. This is not what I am required to do. I must reach a decision as to what was more likely than not on the facts. It is that decision that I must set out in my judgment. In this case, I concluded that the Claimant could not point to a day for which he had not been paid. He could not do so before the claim began and did not do so in his evidence.
9. In his email of 4 October 2023, presumably after the Claimant received the written reasons, he requested a review (reconsideration) on this basis: '*that a serious and deliberate violation of Article 6 of the Human Rights Act 1998 as well as an act of discrimination against the Claimant committed consecutively by 3 Employment Judges, Judge Burgher, Judge Russell and Judge Lewis, on the grounds that the Claimant is a Litigant in Person and cannot defend himself, or defend himself effectively, against the grossly flawed, biased and discriminatory judgments they have made.*' The Claimant says he will refer the matter to members of the UK Parliament.
10. First, the Claimant may bring the judgment to anyone's attention, including his Member of Parliament. It is a public judgment. I am, however, not influenced by that prospect when I reach my decision on reconsideration.
11. Second, this was the Claimant's claim: he was not defending himself. The Tribunals are well used to hearing claims brought by litigants in person. The right to a fair trial under Article 6 of the Human Rights Act 1998 is embedded in all that the Tribunal judge is required to do, it underpins our Rules and

our process. I explained the process, the legal principles, and read carefully the claimant's statement and evidence and asked questions of the Respondent's witness and helped him to formulate his own questions. The test of fairness is not whether a party wins or loses but whether he has had a fair chance of putting his case: the Claimant had this chance.

12. Third, the Claimant does not include me in his list of judges who have breached his rights. But when he refers to EJ Lewis, I take him to refer to me because I made the decision on 27 September 2023.
13. In the review application itself the claimant seeks a reconsideration of AREJ Russell's decision of 2 May 2023. This matter has been referred to her. I have no power to deal with it.
14. I deal with the points made about my 27 September 2023 judgment (although I am EJ Moor and it was not EJ Lewis who made the decision).
 - 14.1. Paragraphs 10-13 and 17: this simply disagrees with the judgment I reached on the facts I heard. It is an attempt to relitigate and it is not in the interests to do so because of the principle of certainty.
 - 14.2. Paragraph 14: this was not Ms Yeboah's evidence. She acknowledged no that there had been issues with pay. A fact I found to be true.
 - 14.3. Paragraph 15: Employment Judges have no power to deal with disputes over tax.
 - 14.4. Paragraph 16, 17: I judged the case impartially as I am required to do.
15. For all of the above reasons, is no reasonable prospect of the original decision being varied or revoked and I refuse the Claimant's reconsideration applications.

Employment Judge Moor
Dated: 5 October 2023