



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr AO Adewusi

**Respondent:** Countrywide Surveyors Limited t/a Countrywide Surveying Services

## JUDGMENT

The claimant's application dated 19 July 2017 for reconsideration of the judgment sent to the parties on 6 July 2017 is refused.

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Employment Judge Franey

24 July 2017

JUDGMENT SENT TO THE PARTIES ON

25 July 2017

FOR THE TRIBUNAL OFFICE

# REASONS

1. I have considered the claimant's application for reconsideration of the judgment dismissing his complaint of race discrimination. That application is contained in an email of 19 July 2017. Ordinarily I would not consider such an application without it having been copied to the respondent so that the respondent could comment, but in this case there is no need to seek such comments.

## Rules of Procedure

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application if I consider that there is no reasonable prospect of the original decision being varied or revoked.

3. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

4. This provision replaced rule 34(3) of the 2004 Rules of Procedure which set out five categories of case in which a decision could be reconsidered (or, as it was then termed, reviewed). They included administrative error, a party not receiving notice of the proceedings, a decision being made in the absence of the party, and where:

**“new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time...”**

5. The Employment Appeal Tribunal (Her Honour Judge Eady QC sitting alone) considered the relationship between the 2004 Rules and the current provision in **Outsight VB Limited v Brown [2015] ICR D11**. The change in wording was not intended to effect any substantive change to the circumstances in which judgment could be reconsidered or reviewed, and it remains the case that where a party seeks reconsideration based on new evidence, it has to be shown that the evidence could not reasonably have been put before the Tribunal at the hearing of the case.

6. That approach was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

**“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”**

7. Finally, in common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

### **Decision**

8. The dismissal judgment followed inevitably from the non-payment of the deposit required by the Deposit Order sent to the parties on 5 May 2017. I have considered whether the information now provided might have affected my decision to order a deposit.

9. I am satisfied that it would not have affected the outcome. The difficulties identified in paragraph 5 of the Grounds for the Deposit Order remain. The claimant has no evidence that managers knew of Mr Adamson's circumstances yet took no action. He relies on rumour and supposition. The material circumstances of the two cases are different. These points were in any event raised at the hearing on 28 April, or should reasonably have been raised.

10. As to the information about his means, I took care at the hearing on 28 April 2017 to ascertain his financial position as recorded in paragraph 10 of the Grounds for the Deposit Order. An application on those grounds for variation of the Deposit Order sent to the parties on 5 May 2017 should have been made more promptly in any event. That information does not provide grounds for reconsidering the dismissal of the race discrimination complaint.

11. Accordingly having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the judgment dismissing the race discrimination complaint being varied or revoked. The application for reconsideration is refused.

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Employment Judge Franey

24 July 2017