



EMPLOYMENT TRIBUNALS

Claimant: Dr G.M. McClure

Respondent: Central and North West London NHS Trust.

London Central

20 October 2017

Employment Judge Goodman

RULE 72 CONSIDERATION OF APPLICATION TO RECONSIDER

1. The claimant has written to the tribunal on 26 September asking for reconsideration of the reserved costs judgment sent to the parties on 18 September 2017.
2. Under the Employment Tribunal Rules of Procedure 2013 a request for reconsideration may be made within 14 days of the judgment being sent to the parties. By rule 70 a Tribunal “may reconsider any judgment where it is necessary in the interest of justice to do so”, and upon reconsideration the decision may be confirmed varied or revoked.
3. Rule 72 provides that an Employment Judge should consider the request to reconsider, and if the judge considers there is no reasonable prospect of the decision being varied or revoked, the application shall be refused. Otherwise it is to be decided, with or without a hearing, by the Tribunal that heard it.
4. Under the 2004 rules prescribed grounds were set out, plus a generic “interests of justice” provision, which was to be construed as being of the same type as the other grounds, which were that a party did not receive notice of the hearing, or the decision was made in the absence of a party, or that new evidence had become available since the hearing provided that its existence could not have been reasonably known of or foreseen at the time. The Employment Appeal Tribunal confirmed in [Outasight VB Ltd](#)

[v Brown UKEAT/0253/14/LA](#) that the 2013 rules did not broaden the scope of the grounds for reconsideration (formerly called a review).

5. I have now considered the costs judgement, having delayed doing so until the reasons for the substantive judgment had been transcribed and corrected. I regret that I am unable to detect any matters that go to the interests of justice. The claimant reviews many of the matters dealt with in the substantive judgement. While he accepts the tribunal's decision both on time and prospects of success, he does not accept that he acted unreasonably in bringing the claim, or pursuing it to a hearing. He points to his statement in the witness statement but he is not seeking pay protection as in the ACCEA document. However, the reasons set out in paragraph 12 of the costs judgement, pay protection is what he was seeking even if that is not what he called it. He acknowledges that some trusts are not providing transitional protection for consultants who have lost their national awards, but does not accept that this does not mean that the respondent's refusal was unrelated to his whistleblowing. I concede that if he was in a category of one, it might be hard to distinguish special treatment for himself, from a general scheme for hypothetical others. Nevertheless, his detailed points do not overturn the conclusion that these are matters which rationally he could and should have accepted before bringing these proceedings, and that it was unreasonable to pursue this claim in the face of the costs warnings documents. Even if he is right, these are arguments about the reasoning and the factual assessment which are properly the subject of an appeal. He is not suggesting that he did not have an opportunity to put his case, or that there is new and relevant evidence that could not have been produced on 14th September, or anything like that.
6. I conclude that there is no reasonable prospect of the costs judgement being successfully reconsidered.
7. I apologise to the claimant for misspelling his name. This is always irritating.

Employment Judge Goodman
20 October 2017