



EMPLOYMENT TRIBUNALS

Claimant: Mr D M Dikuyi

Respondent Brothers of Charity Services Limited

JUDGMENT ON A RECONSIDERATION

The claimant's application dated 22 November 2017 for reconsideration of the Judgment sent to the parties on 22 November 2017 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. I have considered the claimant's application for reconsideration of the Judgment. The application is dated 22 November 2017, received on 23 November 2017, and runs to 9 pages of tightly typed submissions. I have taken the contents of the application into account.

Rules of Procedure

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider 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). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance

to put his case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

The application

4. The claimant failed in his claims of race discrimination, detriment for having made protected disclosures and unfair dismissal for having made protected disclosures (whistle-blowing). His application for reconsideration largely expresses his dismay and disagreement with the conclusion that his claims should be dismissed.
5. Despite his lengthy and detailed application, there is no reasonable prospect of the claimant establishing that the Tribunal made an error of law, or that any of the conclusions on the facts were perverse. Such contentions are in any event better addressed in an appeal than by way of reconsideration. However, the claimant's application contains a limited number of substantive points. I have considered each point in turn.
6. In the first section of the application, second paragraph, the claimant contends that the Tribunal had refused to consider his original ET1 form and had instead focussed on the amendment to the ET1 dated 12 April 2017. However, at the commencement of the final hearing, the Tribunal reviewed the pleadings in the bundle and clarified the claims with the claimant, who confirmed that the claims being pursued were those of detriment and dismissal for whistle-blowing, and of race discrimination. The claimant was asked by the Tribunal to confirm the protected disclosure(s) and act(s) of discrimination relied upon and he confirmed that he relied only on those matters which are set out in paragraphs 5 and 6 of the Judgment and which were those matters set out in his further particulars of claim.
7. In the fourth paragraph of the first section of the claimant's application for reconsideration, the claimant sets out all the claims which were presented to the Tribunal in his ET1, including claims of breach of contract and breach of the Working Time Regulations 1998. No contention is made by the claimant in the fourth paragraph of his application. However, for the avoidance of doubt, the claims of breach of contract and breach of the Working Time Regulations 1998 were dealt with and struck out at the preliminary hearing on 19 May 2017. These claims were not therefore considered at the final hearing.
8. The second section of the application is headed 'J... S...': It is understood that this relates to the allegation of race discrimination by a service user as set out at paragraph 6(3) of the Judgment. The claimant contends in his application that he filed several incident forms over time about the abuse he suffered from a service user. The Tribunal considered these documents and also heard evidence from the respondent that they had only received

one incident form about racial abuse from the claimant, on 14 October 2016. That form was countersigned by a manager, in contrast to the other forms. The Tribunal found against the claimant on the point. Paragraphs 30 and 72 of the Judgment refer. In addition, at paragraphs 73 to 75, the Tribunal found that once the respondent was alerted to the claimant's complaint, it dealt with the matter by moving the claimant to work elsewhere.

9. The third section of the application is headed 'Whistle-blowing'. This is sub-divided into 4 sections, headed by reference to other employees of the respondent.
 - 9.1 The first sub-section, headed Z... D...: The claimant here refers to matters that were not defined by him as part of his whistle-blowing claims. At the commencement of the final hearing, the claimant was asked by the Tribunal to confirm the protected disclosure(s) relied upon and he confirmed that he relied only on one protected disclosure, made on 14 October 2016, which is set out in paragraph 5 of the Judgment. The matters now set out by the claimant occurred before 14 October 2016, when he made his protected disclosure.
 - 9.2 The claimant also suggests that he was dismissed as a result of his whistle-blowing against white employees. However, the Tribunal concluded from the evidence that the claimant was fairly dismissed for gross misconduct, for sleeping at work whilst caring for a vulnerable adult – see paragraphs 67, 68 and 76 of the Judgment.
 - 9.3 The claimant refers to the Employment Rights Act 1996 section 44 and detrimental treatment for health and safety issues although this was not a claim presented or pursued by him.
 - 9.4 The final paragraph of the sub-section headed Z... D..., refers to the claimant's questioning by managers on 13 October 2016, before he made his protected disclosure. This event was defined by the claimant as an act of race discrimination – Judgment paragraph 6(2) – however, at paragraph 71 of the Judgment the Tribunal rejected the claimant's case and concluded in the circumstances that it was proper and proportionate for the respondent to interview the claimant when it did and in the manner adopted.
 - 9.5 The second sub-section, headed 'T... P... Former Senior Support Worker': The Tribunal found that the claimant's reports to the respondent about the manner in which medication boxes were disposed of amounted to a protected disclosure – Judgment paragraph 64. The Tribunal also considered how the respondent dealt with the employees concerned – see the end of paragraph 29 of the Judgment. The claimant now seeks to link the treatment of

the employee concerned as comparative treatment for his race discrimination claim. He did not raise such at the hearing or in submissions, hence the Tribunal's conclusions at paragraphs 66, 75 and 76 of the Judgment.

- 9.6 In the second paragraph of the second sub-section headed 'T... P... Former Senior Support Worker', the claimant raises allegations of false statements made against him by the employee concerned. These allegations were not raised at the hearing and did not form part of the claims pursued by the claimant. The claimant also here refers to the Employment Rights Act 1996 section 44 and detrimental treatment for health and safety issues although this was not a claim presented or pursued by him.
- 9.7 The third sub-section, headed 'C... M... Senior Support Worker': The claimant refers to a matter that was not defined by him as part of his whistle-blowing claims. At the commencement of the final hearing, the claimant confirmed that he relied only on one protected disclosure, made on 14 October 2016, which is set out in paragraph 5 of the Judgment. The claimant now seeks to link the treatment of this employee, in relation to a matter not drawn to the Tribunal's attention at the hearing, as comparative treatment for his race discrimination claim.
- 9.8 The fourth sub-section, headed 'A... Senior Support Worker': The claimant again refers to matters that were not defined by him as part of his whistle-blowing claims. At the commencement of the final hearing, the claimant confirmed that he relied only on one protected disclosure, made on 14 October 2016, which is set out in paragraph 5 of the Judgment. The matters set out in this sub-section occurred before 14 October 2016, when he made his protected disclosure and were not matters pursued by the claimant as part of his race discrimination claim.
- 9.9 The claimant now seeks to link the treatment of the employee named in this sub-section as comparative treatment for his race discrimination claim. He did not raise such at the hearing, hence the Tribunal's conclusions at paragraphs 66, 75 and 76 of the Judgment.
- 9.10 In addition, the claimant refers to his working hours, which had formed part of his claim of a breach of the Working Time Regulations 1998. That claim was struck out at the preliminary hearing on 19 May 2017 and no aspect of it was pursued by the claimant at the final hearing.
10. Those matters to which the claimant refers in the final paragraph of his application were considered by the Tribunal at the hearing and in the

course of its deliberations. It is not in the interests of justice to reopen such matters once decided.

11. I am satisfied that the Tribunal clarified the claims, the issues to be determined, the purpose of cross examination and the purpose of closing submissions to the claimant and assisted him in that regard by taking him through each of the issues to be determined in the case.

Conclusion

12. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Employment Judge Batten
Date: 3 January 2018

JUDGMENT SENT TO THE PARTIES ON:

11 January 2018

FOR THE TRIBUNAL OFFICE