



## EMPLOYMENT TRIBUNALS

### Claimant

### Respondent

Mr. S Ibrahim

v

HCA International Limited

## DECISION ON APPLICATION FOR RECONSIDERATION

### Rules 70-73 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

1. The claimant's application for reconsideration of the judgment dated 28 September 2017 is refused.
2. Reasons for this decision are set out below.

## REASONS

### Background

1. By claim form dated 24 January 2017 the claimant brought claims of unfair dismissal, wrongful dismissal, whistleblowing, breach of contract, sex discrimination and unlawful deduction from wages. All of the claims were resisted by the respondent.
2. Following a preliminary hearing on 14<sup>th</sup> and 15<sup>th</sup> June 2017 the claims were dismissed in a reserved judgment with reasons dated 28 September 2017. The reserved judgment should be read alongside this decision.
3. On 11 October the claimant applied for reconsideration of the judgment and, in support of his application, submitted the following documents:-
  - a. A 20 page application;
  - b. Witness statements for Nezha El Bassri, Bandar Al Noon and Majid Vaghetian; and
  - c. A letter dated 25 May 2017 from a Consultant Psychiatrist, relating to Ms El Bassri.
4. I have read and considered all of the above documents in reaching this decision.

## The relevant law

5. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provide as follows:-

### *Rule 70 Principles*

*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.*

### *Rule 71 Application*

*...an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication of the original decision was sent to the parties...and shall set out why reconsideration of the original decision is necessary.*

### *Rule 72 Process*

*(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked...the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing...*

6. In Trimble v Supertravel Ltd [1982] ICR 440 the Employment Appeal Tribunal said that on an application for what was at the time a review (and is now reconsideration) if a matter has been ventilated and properly argued during the course of Tribunal proceedings, then any error of law falls to be corrected on appeal and not by way of review.

## Decision

7. In his application for reconsideration the claimant's arguments, in summary are that:-
- a. He did not present his claims in the way that he wanted to at the preliminary hearing;
  - b. The new evidence should be allowed in and would make a difference to the outcome; and
  - c. He was ambushed at the preliminary hearing.
8. I have considered carefully these arguments and the other issues raised in the application.

9. The reconsideration process is not designed to allow a party a second chance to present their case if they are not happy with the way in which it was presented in the first place, or to reapply for witness orders that have previously been refused.
10. The claimant had ample opportunity to argue his case at the preliminary hearing. Although he represented himself for some of the hearing, he had the benefit of legal advice and was able to present detailed legal argument including written submissions. He also had the time, after the conclusion of the hearing, to reflect and take advice if he so chose, before submitting further written submissions.
11. On the second day of the hearing, and prior to closing submissions, the claimant had the opportunity to take advice from an ELIPS adviser. The hearing was adjourned for a short period to allow the claimant to consult with the ELIPS advisor and the Tribunal permitted the ELIPS adviser to attend the remaining part of the hearing and assist the claimant.
12. The claimant suggests in his application that the Tribunal “*refused to allow for Ms Bassri to give evidence because there was no medical report about her condition.*” That is not correct.
13. At the outset of the preliminary hearing the claimant indicated that he intended to call Ms El Bassri, his fiancée and former colleague, to give evidence on his behalf. No witness statement had been prepared for Ms Bassri and the respondent objected to her giving evidence without a witness statement. The claimant was given time to consider his position, and informed the tribunal that he did not wish to call Ms Bassri to give evidence at the preliminary hearing, but that she would be giving evidence at the final hearing.
14. The Tribunal did not refuse to hear Ms Bassri’s evidence. The claimant chose not to call her. Ms Bassri was present through the preliminary hearing.
15. In order to persuade the Tribunal that it would be in the interests of justice to reconsider the judgment and allow the claimant to call additional evidence, the claimant would have to persuade the Tribunal that the evidence -
  - a. could not reasonably have been obtained prior to the preliminary hearing;
  - b. is relevant and important, such that it is likely to have influenced the outcome of the preliminary hearing; and
  - c. appears credible.
16. I am not persuaded that any of the evidence submitted with the claimant’s application for reconsideration could not have been obtained prior to the preliminary hearing. For example, the doctor’s letter is dated 25 May 2017 – more than two weeks before the preliminary hearing.

17. Having read the additional evidence submitted by the claimant, I do consider that it is likely to have had any influence on the outcome of the preliminary hearing. The statements of Bandar Al Noon and Majid Vaghetian are of very little if any relevance to the issues that fell to be determined at the preliminary hearing, and the same can be said also for large parts of Ms El Bassri's statement.
18. I do not consider that the claimant was 'ambushed' at the preliminary hearing. He had been given notice of the hearing and of the issues to be determined at the hearing, and was well prepared for the hearing. There were regular breaks during the hearing, including a short adjournment to allow the claimant more time to consult with an ELIPS advisor.
19. For the above reasons, there is no reasonable prospect of the original decision being varied or revoked, and accordingly the claimant's application for reconsideration is refused.

**Employment Judge Ayre on 9 January 2018**