EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr D Akhigbe	**v**	**Berkeley Homes (Urban Renaissance) Ltd**

Heard at: Watford **On**: 16 August 2018

Before: Employment Judge Bedeau

Appearances

For the Claimant: In person
For the Respondent: Mr J Williams, Counsel

RECONSIDERATION JUDGMENT

1. The judgment promulgated to the parties on 28 February 2017, is neither varied nor revoked but is confirmed.

2. Any further hearings before this tribunal will await the outcome of the claimant's appeal to the Employment Appeal Tribunal in respect of this case and case number 3329283/2017.

REASONS

1. On 6 January 2017, I struck out the claimant's claims; refused his application to amend; and dismissed from proceedings two respondents, namely St Edward's Homes Ltd and the Berkeley Group plc. In their place I substituted Berkeley Homes (Urban Renaissance) Ltd as the correct respondent.

2. The claimant has appealed against that judgment and although the appeal was refused at the sift stage, an application for an oral hearing was granted. Before Mrs Justice Simler, the President of the Employment Appeal Tribunal, it was held that there is an arguable case that there had been an error of law in relation to the application of the burden of proof and that to strike out the claim without a hearing also amounted to, arguably, an error of

law. Further, there are arguable grounds in relation to the correct respondent. At this point in time there is no date for the inter-partes hearing. It is, I am told, unlikely to be before October 2018.

3. The claimant applied to the tribunal on 3 April 2018, for a reconsideration in which he wrote:

> "Further to my email of 29 March 2018 I wish to apply for a reconsideration of the strike out ruling and to add a new detriment.
>
> I believe the reconsideration was appropriate due to new evidence that has now emerged. I have just seen my personal data that was concealed. I believe I am entitled to add this new detriment as I have only just discovered it. The respondent has released a string of emails title "Stanmore Place" that was initially concealed.
>
> However, they have released a heavily redacted email in which it was alleged that I was taking excessive lunch break. The email is titled "FYI" dated 26 November 2014 timed at 15:34. Clearly, as I was the subject of the email hence it is my personal data."

4. I considered my powers under the reconsideration provisions of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, rules 70 to 73. I granted the claimant's application to the extent of allowing him to argue before me whether it is in the interests of justice to either vary or revoke my judgment. The parties were given notice of this hearing. I, therefore, have to consider my powers under rule 70.

Submissions

5. The claimant relies on two documents and they are in the Reconsideration Bundle at pages 347 and 349.

6. On page 347 is an email dated 23 September 2014, timed at 14:01, sent to the claimant. The sender's name has been redacted. It states:

> "Hi Donald, welcome to St Edwards!
>
> You may have already received this, but in case not, please see below for details of the CSCS Test. I have confirmed that costs will be covered by St Edwards so do keep the receipts when you book. There is also a book available which costs about £10 to help you revise. I look forward to meeting you in person."

7. The email has on it St Edwards Home Limited.

8. On page 349 is an email, again the sender's name and details have been redacted. It is dated 26 November 2014, timed at 15:34 and the subject is "FYI", For Your Information. The sender wrote:

> "When I came back from lunch 1:25 today, Donald pull in behind me, so obviously been out in his car. When I went to the canteen at 2pm he was having his lunch. He came back to the office at 2:15."

9. The claimant submitted that what I had found in the judgment at paragraph 54, that all correspondence had in effect been disclosed, was inaccurate and as a result of the disclosure, under the title "Stanmore Place", further documents were disclosed to him following his Subject Access Request. My finding about full disclosure was an error. He did not attribute that error to me as it was understandable because not all of the documents had been disclosed to him and to the tribunal at the time of the original hearing. On that basis I should consider revoking the judgment I gave on 6 January 2017 and promulgated on 28 February 2018.

10. Mr Williams, counsel on behalf of the respondent, submitted the two documents referred to do not reveal anything new as lunchbreaks was one of the issues discussed at the preliminary hearing in January last year and that the reference to the employer in document 347, is already to be considered by the Employment Appeal Tribunal.

11. The primary position adopted by the respondent is that this tribunal having given its judgment and the judgment being the subject of an appeal, it has no legal standing to consider any of the matters raised by the claimant in relation to the judgment.

12. In the response to the respondent's cross-appeal, prepared by the claimant's counsel who represented the claimant at the EAT, paragraphs 4 and 5 states the following:

> "4. The claimant will continue to aver that he was subjected to a detriment in that he was not provided with all of the documents he had requested as part of his Subject Access Request (SAR). Moreover, the claimant has been somewhat vindicated in this submission by the fact that the respondent now apparently concedes that "Certain further emails/attachments (totalling 35 pages) "containing the claimant's personal data in response to his SAR "were not found when the respondent conducted its original searches in 2015" and are now being sent to the claimant (see the respondent's letter to the EAT dated 28 March 2018.
>
> 5. The claimant's representatives has not seen these documents at the time of writing this reply but reserves the right to adduce these documents before the Appeal Tribunal if necessary since the respondent has already indicated it will not object to their admission."

The law

13. Rule 70 states,

> "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."

Conclusion

14. I have taken into account the grounds of appeal which the President decided could be argued at an inter-partes hearing before the EAT. They concern the correspondence under the heading "Stanmore Place", in particular, pages 347 and 349; the claimant's application to consider whether in relation to 349 there is a further detriment to be pleaded; and the identity of the correct respondent. In my judgment this reconsideration application is refused as all of the relevant matters will be argued before the EAT in due course. The outcome of that appeal will determine the future conduct of this case.

15. I, therefore, neither vary nor revoke the judgment but confirm it at this stage.

16. All proceedings and pending applications in this case and in cases number 3305908/2018 and 3306927/2018, are stayed until the outcome of the claimant's appeal before the Employment Appeal Tribunal.

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Employment Judge Bedeau

Date: ……10 October 2018……..

Sent to the parties on: ..10 October 2018

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For the Tribunal Office