EMPLOYMENT TRIBUNALS

Claimant Mrs. G. Leclerc

Respondent AMTAC Certification Ltd

v

CONSIDERATION OF APPLICATION FOR RECONSIDERATION

1. Written reasons were sent to the parties on 8 November 2018. By email dated 12 November 2018 the claimant applied for an extension of time to 17 December 2018 to apply for a reconsideration. I granted that extension to 17 December 2018. The claimant applied for a reconsideration in writing in time and delivered a paper copy of her application, consisting of two lever arch files of documents, by hand to the tribunal on 12 December 2018.

Concise statement of the law

2. By rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('the 2013 Rules'), a tribunal may on the application of a party reconsider any judgment where it is necessary in the interests of justice to do so.

3. By rule 72, an employment judge shall consider any application made under rule 71. If the judge considers that there is no reasonable prospect of the original judgment being varied or revoked the application shall be refused.

4. The tribunal has a discretion to reconsider a judgment where it is necessary to do so in the interests of justice. Although the discretion is wide, it is not limitless; it must be exercised judicially and with regard, not just to the interests of the party seeking the reconsideration, but also to the interests of the other party and to the public interest requirement that there should, as far as possible, be finality of litigation. Moreover, tribunals and employment judges must seek to give effect to the overriding objective when exercising their discretion under the 2013 Rules.

5. The test in *Ladd v Marshall* [1954] 3 All ER 745 (together with the overriding objective) continues to apply under the 2013 Rules where a party seeks to persuade a tribunal to reconsider its judgment on the basis of new evidence (*Outasight VB Ltd v Brown UKEAT/0253/14 (21 November 2014, unreported), para 40*. The test has three limbs. It must be shown:

(a) that the evidence could not have been obtained with reasonable diligence for use at the original hearing;

(b) that it is relevant and would probably have had an important influence on the hearing; and

(c) that it is apparently credible.

The application

6. This application which runs to 175 pages and is additionally supported by substantial new evidence, is set out in 4 parts.

7. The application states that the tribunal reasons are inadequate, are not based on evidence, the method by which the tribunal tested the disclosures is wrong and that various findings are wrong. The claimant states that she was put under time pressure and alleges that the respondent has 'meddled' with the evidence in the bundles.

8. The claimant relies on evidence in the bundle as well as the new evidence.

9. I have read the claimant's application. In large part it amounts to a detailed re-arguing of the case in the light of the judgment. There must however be finality in litigation. The claimant has had an opportunity to argue her case at the hearing and it is not in the interests of justice to re-open the proceedings. That a party disagrees with a judgment is not a reason to allow a reconsideration.

10. Insofar as it is based on new evidence, the application does not satisfy the requirements of the test in *Ladd v Marshall*. The evidence could have been obtained by reasonable diligence for the full hearing. Although the claimant asserts that the evidence could not reasonably have been provided: it is not clear why this is the case. She has set out the new evidence in response to matters set out in the judgment.

11. Even if the claimant were right in her arguments about the disclosures, the tribunal found as fact that (with one possible exception: audits) the dismissal and detriments alleged were not caused by the alleged disclosures.

12. There was no 'procedural mishap'. The tribunal has a power to timetable the hearing of the evidence, which it exercised (rule 45). The parties gave their own time estimates for cross examination and complied with those estimates. The claimant did not ask for further time. I refer to paragraph 14 of the judgment in this respect.

13. There is no evidence that the respondent has meddled with the evidence in the bundles. The claimant raised no concerns during the course of the hearing about the witness table bundle which she used to give evidence in cross examaination, and which was the same as the tribunal's bundles. Any typographical errors in the judgment are only that and are not evidence of malpractice by the respondent.

14. There is therefore no reasonable prospect of the original decision being varied or revoked and I refuse the application for a reconsideration.

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Employment Judge Heal

Date: ……09.01.19……..

Sent to the parties on: ..16.01.19.....

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For the Tribunal Office