EMPLOYMENT TRIBUNALS

Claimant: **Mr S. Noronha**

Respondent: **Care Quality Commission**

Employment Judge Goodman
25 June 2019

JUDGMENT

The application of Matthew Preston for reconsideration of the judgment sent to the parties on 6 November 2018 is refused under rule 72 of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. Under the Employment Tribunal Rules of Procedure 2013 a request for reconsideration of a judgement 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.

2. 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.

3. 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).

4. Matthew Preston wrote to the tribunal on 27 March 2019 stating he had recently seen the judgment in this case and that the statement in paragraph 69 about the reason why he was given a final warning by the respondent was incorrect**.**

5. At my direction the tribunal wrote to Mr Preston on 18 May 2019**:**

> "You have asked for changes to be made in the reasons for the judgment. This is a public document, available online with other employment tribunal decisions. The document cannot be altered once made public, but there is a procedure called reconsideration, when a judge can decide whether in the interests of justice a decision should be revoked or varied or remade. The reconsideration decision is also placed onto the online register.
> You had prepared a witness statement for the hearing, but did not attend for the stated reason, and the tribunal was told you were unable to give evidence by Skype. The words to which you object are in paragraph 69, part of the minority judgment of one of the lay members, Dr V Weerasinghe. He was setting out his reasons for holding that Ms Noronha was dismissed because she had lodged a grievance about discrimination, and that she would not have been dismissed for the reasons given by CQC, comparing her position with yours.
> The evidence on which his reasons were based was given at the hearing, on oath, by Ms Elizabeth Kershaw. In answer to a question from counsel for CQC, the note reads that she said: "Mr Preston was also the subject of a final written warning for plagiarising a report – late 2016, early 2017".
> You state in your email that the plagiarism charge was withdrawn. You do not say you did not receive a final written warning. Are you able to set out the reasons your employer gave you for giving you a final written warning? Do you perhaps still have the letter delivering the disciplinary outcome?
> As there are time limits for reconsideration applications, it would assist if you would supply evidence or the dates of your travel to and from Australia, and when the decision came to your attention.
> The judge will wait for your reply before deciding whether the decision should be reconsidered by Dr Weerasinghe. You should be aware that the reconsideration judgment will itself be placed on the online register.
> It would be helpful if you could reply in 14 days, stating whether you wish the judgment to be reconsidered, and attaching any evidence you want to be taken into account."

6. Mr Preston replied on 21 May that he 'just wanted to acknowledge receipt' before he went away for a few days' break, that he did want the judgment reconsidered, and "I will prepare a full response with dates of travel and any papers I can obtain from my employer".

7. Nothing more has been heard from him. It is not clear why this is. Mr Preston must know or be able to find out his dates of travel to and from Australia. This does not require input from his employer. He must know when he returned to work, and when his supervisor showed him the judgment. He does not need to find this out from anyone else. He states that the final warning was not for plagiarism: if he can remember why it was *not* imposed, he must be able to remember why it *was* imposed, even if, as he said in his 27 March email, he has deleted his own notes.

8. It is now nearly 6 weeks since Mr Preston was asked to reply in 14 days. There is nothing of substance for Dr Weerasinghe to consider when being asked to reconsider his minority judgment on the basis, apparently, that what Ms Kershaw said on oath was wrong.

9. In the absence of the information requested the request for reconsideration has no reasonable prospect of success, either on time, or on substance. It is therefore refused.

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Employment Judge GOODMAN

Date 25 June 2019

DECISION SENT TO THE PARTIES ON

26 June 2019

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FOR THE TRIBUNAL OFFICE