Case Number: 2501482/2018

THE EMPLOYMENT TRIBUNALS

Claimant: **Mr R Kirkham**

Respondent: **United Kingdom Research & Innovation**

Heard at: **North Shields Hearing Centre** **On:** **Thursday 27th June 2019**

Before: **Employment Judge Johnson sitting alone**

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The claimant's application for a reconsideration of the judgment on application for an anonymity order, promulgated on 15th May 2019, is refused. It is not in the interests of justice for there to be a reconsideration.

REASONS

1. By reserved judgment with reasons, promulgated on 15th May 2019, I refused the claimant's application for an anonymity order, made pursuant to Rule 50 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Detailed reasons running to 49 paragraphs over 17 pages were provided.

2. By application dated 29th May 2019, the claimant sought a reconsideration of that judgment, pursuant to Rule 70-72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. In that application which runs to 11 pages, the claimant sets out what he describes as 3 errors, which he submits should corrected by way of reconsideration. The 3 errors identified by the claimant are as follows:-

   i) not dealing with the legal arguments that I made
   ii) economic arguments and the analysis of evidence
   iii) repeated errors in the final analysis

   Rules 70-72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 state as follows:-

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 revoked it may be taken again.

71 Application

Except where it is made in the course of a hearing, 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 or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

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 (including, unless there are special reasons, where substantially the same application has already been made and refused), 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. The notice may set out the judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the employment judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interest of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the employment judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the president, vice-president or a regional employment judge shall appoint another employment judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the

reconsideration be by such members of the original tribunal as remain available or reconstitute the tribunal in whole or in part.

3. I have considered the claimant's application under Rules 71 and 72. I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The claimant has set out in detail the grounds of his application. Those were copied to the respondent and their observations were made by letter dated 4th June 2019. I have taken all of those matters into account.

4. The first ground of the claimant's application is that the Tribunal did not deal with the legal arguments made by the claimant in his original application. That is not accepted. It is clear from the detailed reasons given for the refusal of the application for an anonymity order, that both the claimant's evidence and his legal arguments were taken into account, insofar as they were relevant to the nature of the application. As is set out in paragraph 3 of the Reasons, the claimant provided a substantial volume of information which he described as both "evidence" and "authorities". The hearing of the application took one full day. The claimant was given a full opportunity to present such evidence that he wished to present. As is set out at paragraph 13 of the Reasons, the claimant was at the end of that hearing invited to distil from the hundreds of pages of information he had supplied, a concise summary/closing submission containing all of the matters upon which he sought to rely. The claimant agreed to do so and submitted that written submission, the contents of which were taken into account by myself.

5. I draw the claimant's attention to Rule 52 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, which states:-

> "62 – Reasons
>
> (1) The tribunal shall give reasons for its decision on any disputed issue, where the substantive or procedural (including any decision on an application for reconsideration or for orders for costs, preparation time or wasted cost.)
>
> (4) The reasons given for any decision shall be proportionate to the significance of the issue and for decisions other than judgments may be very short.

6. I consider the reasons I provided for the reserved judgment promulgated on 15th May to be proportionate to the issues raised by the claimant. The claimant accepted at the end of the hearing on 11th March that the main thrust of his argument was that he would be subjected to retaliatory action from persons within the academic community if his name were to be associated with these Employment Tribunal proceedings. I consider the claimant's application for reconsideration on the grounds that I did not deal with his legal arguments, to be no more than an attempt to present the same arguments again.

7. The claimant's second ground of objection is that I did not properly deal with his economic arguments and the analysis of evidence. Again, that submission is

rejected. Again, the claimant simply invites me to re-examine what he has already submitted, in the hope that I will reach a different conclusion. I do not consider that it is in the interests of justice to do so.

8. Finally, the claimant alleges that there were "repeated errors in the final analysis". He states in his application:-

> "It is painfully apparent that Judge Johnson was not able to follow the arguments that were made to the tribunal. I explain the errors made by the judge in annex A. Each are individually error of law. There are other errors scattered throughout the decision, but that brief section is enough to make my point for present purposes. The judge was unable to deal with the arguments, as is clear from annex A, and that is also a substantial error of law. In other words the cumulative picture must be looked at. Overall, the effect is that the decision was inadequately reason, especially when considered with the other errors that had been raised in this application."

9. The claimant then sets out in annex A a spreadsheet-type document, listing "table of errors in conclusion of decision". What the claimant then purports to do is to disagree with some of my findings as set out in the reasons for the original refusal. That again is an attempt to rehash or regurgitate the same arguments in the hope that I might be persuaded to reach a different conclusion. Again, I do not consider that it is in the interests of justice for me to undertake that proposed course of action.

10. The claimant states in his "conclusion" of his application, the following:-

> "This is the second time I have attempted to obtain an anonymity order from this tribunal. Both times, there have been serious mistakes made in analysing the case and the evidence. I hope I can now be "third time lucky" and now received the order I am entitled to."

11. The claimant misunderstands the position. He is not "entitled" to an order. He must satisfy the Employment Tribunal on the basis of the legal principles set out in the original decision, that it was in the interests of justice for an anonymity order to be made. Despite the volume of evidence and materials put forward by the claimant, he has failed to do so.

12. It is not in the interests of justice for there to be a reconsideration of the original decision. It is not in the interest of justice for there to be an anonymity order in this case, for the reasons set out in the promulgated judgment. The claimant's application for a reconsideration is refused.

EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
27 June 2019

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