



EMPLOYMENT TRIBUNALS

Claimant: Mr R Mehmood

Respondent: Worldwide Foods (Rochdale) Limited

RECONSIDERATION JUDGMENT

The respondent's application dated 13 May 2019 for reconsideration of the judgment sent to the parties on 29 April 2019 is refused.

REASONS

1. I have undertaken preliminary consideration of the respondent's application for reconsideration of certain aspects of the judgment. That application is contained in a letter of 13 May 2019. I have also considered comments from the claimant dated 28 June 2019. No written reasons for the judgment have been requested but from my notes of the hearing I have refreshed my memory of the oral reasons given. A recording of those oral reasons remains available but I have not found it necessary to listen to it.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384

Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."

6. Finally, in common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. There are two points upon which reconsideration is sought.

No Reduction to Compensatory Award

8. The respondent says that the conclusion that there should be no reduction in unfair dismissal compensation pursuant to **Polkey v AE Dayton Services Ltd [1987] UKHL 8** should be reconsidered as the claimant said in evidence that during the discussion in which we found he was dismissed, he had threatened to leave a week later in any event.

9. This point was addressed in submissions. The claimant's representative invited us to conclude that the claimant was only putting pressure on the respondent by saying that, and that he would not have resigned had he not been dismissed. We did not accept that argument entirely, although we were satisfied that he would have waited until he had another job before resigning. More importantly, however, the Tribunal found that any such resignation would have been an unfair constructive dismissal in any event because the claimant was being treated in a way which we found was race discrimination. It would not be just and equitable to limit the compensatory award because of a possible subsequent resignation which would itself have been an unfair constructive dismissal.

10. We also rejected the respondent's argument that the claimant would have been fairly dismissed for taking breaks or behaving abusively.

11. The **Polkey** arguments were raised and addressed during the hearing and there is no reasonable prospect of the respondent establishing that it would be in the interests of justice to reopen them.

Injury to Feelings Award

12. The Tribunal made an award of £12,000 for injury to feelings following our finding that there had been direct race discrimination in the failure to give the claimant a written contract of employment, the failure to pay him for overtime and holiday pay, and the failure to ensure that he was paid on time each week.

13. The respondent now raises again its argument that the award should have been in the lowest band under **Vento v Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871**. It reiterates arguments raised at the hearing about whether the circumstances of the non-Pakistani comparators were genuinely comparable. Although presented as an issue about quantum it is in truth an attack on most of the Tribunal's findings on race discrimination.

14. Nothing raised in the reconsideration application is new. The same points were raised during the hearing. We explained in our oral reasons why they were rejected. It would not be in the interests of justice to reopen the matter and let the respondent have a second bite at the cherry.

Conclusion

15. Having considered all the points made by the respondent I am satisfied that there is no reasonable prospect of the Tribunal's original decision being varied or revoked. The points raised were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Franey

3 July 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

16 July 2019

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