EMPLOYMENT TRIBUNALS

Claimant: Mr F Kabengele

Respondent: Amazon UK Services Ltd

RECONSIDERATION JUDGMENT

The claimant's application for reconsideration is refused.

REASONS

1. This decision has been made without a hearing, in accordance with rule 72(1). The claimant's reconsideration application is refused because there is no reasonable prospect of the original decision being varied or revoked.

2. The final hearing in this case took place in Leicester and Nottingham in late April 2019 before a full tribunal (me – Employment Judge Camp – sitting with Mr Robbins and Dr Looker). Our reserved decision, with full written Reasons, was sent to the parties on 29 July 2019. On 12 August 2019 – within the 14 day time limit – the claimant made a written reconsideration application. I refer both to the tribunal's decision and the application.

3. Where practicable – and it is practicable here – any application for reconsideration must in the first instance be considered by the Employment Judge who chaired the tribunal that made the original decision, i.e., in this instance, by me.

4. I don't intend to address each and every point the claimant makes in his reconsideration application. Generally:

    4.1 almost all of the points made are points that were raised during the hearing, and which we took into account but in relation to which we disagreed with the claimant's analysis, or which could reasonably have been raised during the hearing but weren't and which, had they been raised, would not have made any difference to anything;

    4.2 any points not raised during the hearing and which could not reasonably have been raised there provide no proper basis for altering our decision;

    4.3 looking back through the decision and taking into account everything the claimant has put in the reconsideration application, I cannot see anything that, even arguably, is an error of law;

    4.4 the way in which we approached the evidence and the findings that we made was an approach and were findings that it was open to us to take

and make. The fact that the claimant may disagree, and the fact it is conceivable that a different tribunal might have done things differently, do not provide any grounds for reconsideration. Similarly, our decision is fully reasoned and the fact that the claimant disagrees with our reasoning does not make it inadequate;

4.5 the claimant's reconsideration application does not engage to any significant extent with one of the fundamental points that led to him losing this case, namely that there was nothing of substance supporting a finding that race – or him having complained of discrimination – was a factor in any of the relevant decision-making (and, moreover, that in many instances, the evidence positively suggested that race was very unlikely to be a factor). See, in particular, paragraphs 50 to 58 and 65 to 69 of the Reasons. Even if there are some mistakes in our decision – and I don't think there are – and they were corrected, that fundamental point would still be there;

4.6 connected to the previous point, in the reconsideration application itself, the claimant repeats the allegations he made during the hearing to the effect that he was singled out. Even if he was singled out – and we made findings about the extent to which he was – this would not help his race discrimination case. This is because most of his relevant former colleagues are also black; if he was less favourably treated, most of the potentially valid comparators are the same race as him.

5. Dealing specifically with some of the claimant's points:

5.1 we considered and dealt with all of the victimisation complaints the claimant wanted to pursue even though most of them were not, in our view, properly before the tribunal (see paragraph 9 of the Reasons);

5.2 Employment Judge Britton did not make separate deposit orders for victimisation and direct discrimination complaints. He set out a list of claims, some of which were just direct discrimination complaints and some of which were said to be both direct discrimination and victimisation complaints, and ordered a £5 deposit per claim;

5.3 what we identified as mistakes in previous decisions were mistakes in the claimant's favour;

5.4 the claimant writes, "*there is no evidence showing that Mr. Griffiths was not aware of Felly's grievance or its contents and why did he manage to send all his interviews with Felly's witnesses to Mr Lee Cook?*" We dealt with Mr Griffith's state of knowledge in paragraph 134 of the Reasons. As set out in paragraph 118, the material was sent to Mr Cooke by HR, not by Mr Griffith;

5.5 the claimant seems to be suggesting that a former colleague who gave evidence on his behalf has, since the hearing, been mistreated by one of the individuals who the claimant was accusing of direct race discrimination and victimisation: Miss Jablonska. Even if there were evidence of victimisation of this former colleague by Miss Jablonska, I don't see how that would be relevant to the claimant's case. If the allegation is that she is inclined to victimise people, I note that we decided she could not have victimised the claimant because she was unaware of any relevant

grievance about discrimination at the relevant time (see paragraph 132 of our decision);

5.6 the claimant also suggests that since the hearing, someone else has complained about Miss Jablonska. He writes, "*investigation involves Mafine Sylla...who is also black and she is going against KJ* [Miss Jablonska] *and her bullying/racism*". Even if I assume that Mafine Sylla has recently made an allegation of racism against Miss Jablonska – and this is not an assumption I would necessarily make because it may well be that her complaint is about bullying and that it is the claimant and not Mafine Sylla who is alleging that the bullying was racist – there is no significant chance that this information would cause us to alter our decision. A bare, unproven allegation of race discrimination by a third party in 2019 is evidentially insignificant in relation to w

5.7 hat the reason was for particular treatment of the claimant 18 months or so earlier. Further, if there had been some evidence before us that Miss Jablonska was racially prejudiced in general terms (and there was not), this would not change the findings we made as to what happened and why things happened. Moreover: the main thing the claimant's claim was about – his suspension and dismissal – was not something for which, on our findings, Miss Jablonska was at all responsible (see paragraphs 98 & 112); in relation to the claimant's other principal complaint – about his probationary period being extended – we decided, on the evidence, that it had been extended because, objectively, he had not achieved the requisite standard (see paragraph 82);

5.8 following on from the previous point, there has to be finality in litigation. It is not appropriate to re-open a race discrimination case just because, after trial, someone else alleges race discrimination against one of the alleged discriminators. I can envisage a case where a finding that a particular individual was not racially prejudiced was so central to a decision in the respondent's favour, and where after the decision evidence emerges that that individual is in fact racially prejudiced that is so compelling, that it would be appropriate to set aside the decision on reconsideration, but this is very far from being such a case;

5.9 I am not sure what the claimant's argument is about the disciplinary action taken against Miss Jablonska and an alleged refusal to include in the bundle the written record of a formal warning. The respondent all along accepted that some of the criticism of her management was legitimate and that she had been spoken to formally. The claimant's claim was about whether she (and others) were discriminators, not whether she was a good manager. There was nothing in the evidence to suggest that she had been formally or informally taken to task because of discriminatory behaviour;

5.10 finally, the claimant asks, "*Why there were so many inconsistencies in Lee Cook, Karolina and Wess Griffiths testimonies?*". There weren't. There were a handful of unimportant inconsistencies, stemming from genuine differences and/or changes in recollection, of the kind that are present in almost every case.

Case No. 2600569/2018

Employment Judge Camp

15 August 2019

Sent to the parties on:

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For the Tribunal:

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