



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

AND

Mr J Penny

South Western Ambulance Service
NHS Foundation Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

ON 10 September 2019

EMPLOYMENT JUDGE A Goraj

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The Judgment of the Tribunal is that the Claimant's application for reconsideration is refused because there is no reasonable prospect of the Judgment sent to the parties on 8 August 2019 being varied or revoked.

REASONS

1. The Claimant has applied for a reconsideration of the reserved judgment with reasons dated 26 July 2019 which was sent to the parties on 8 August 2019 ("the Judgment"). The grounds for the Claimant's application are set out in an email dated 21 August 2019 which was received at the Tribunal on that date ("the application").

2. The application consists of an eight-page document with unnumbered bullet points. The Tribunal has numbered the bullet points 1 – 102 and refers to them by such numbers where appropriate below.
3. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure (“the Rules”). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The written reasons were sent to the Claimant on 8 August 2019 and the application was received by the Tribunal on 21 August 2019. The application was therefore received within the relevant time limit.

THE LAW AND THE CONCLUSIONS OF THE TRIBUNAL

THE LAW

4. The Tribunal has had regard in particular to:
 - (a) Rules 70 -73 of the Rules referred to above including that the grounds for reconsideration are limited to those set out in Rule 70 namely, that it is necessary in the interests of justice to do so. The interests of justice apply to both parties.
 - (b) The Employment Judge is (a) required to consider as a preliminary matter pursuant to Rule 72 (1) of the Rules whether there is any reasonable prospect of the relevant decisions being varied or revoked and (b) if not so satisfied to dismiss the application at that stage.
 - (c) The guidance contained in **Trimble v Supertravel Ltd [1982] ICR 440 EAT**, including that if a matter has been ventilated and argued at a Tribunal hearing any error of law falls to be corrected on appeal and not by review.

THE CONCLUSIONS OF THE TRIBUNAL

5. Having given careful consideration to the matters raised in the application the Tribunal is satisfied that there is no reasonable prospect of the Judgment being varied or revoked for the reasons explained below.
6. The Claimant has raised over 100 matters for reconsideration by the Tribunal. The Tribunal does not however consider that it is appropriate to address the matters on an individual basis, for the reasons explained below.

7. The matters raised by the Claimant can be broadly categorised as follows:- (a) submissions on factual matters (including alleged factual inaccuracies in and omissions from the Judgment) (b) allegations of alleged inconsistency of treatment compared with other former colleagues (paragraphs 19 -21 of the application). This includes new/ further allegations relating to SG and MW (paragraphs 19 and 20 of the application) and (c) submissions regarding the conduct of the Hearing / disagreement with the findings and conclusions of the Tribunal.
8. Having given careful consideration to contents of the application the Tribunal is satisfied that, save where otherwise indicated at paragraphs 9 onwards below, the matters raised by the Claimant in the application relate to either :-

(1) Matters which the Claimant has already raised/ had an opportunity to raise during the 5-day Hearing (including during the course of his evidence to the Tribunal and in his written and oral submissions). Further, It is not therefore, in the interests of justice to reventilate matters which the Tribunal has already considered/ could reasonably have been raised by the Claimant during the course of the Hearing or,

(2) Alleged factual inaccuracies in the Judgment (such as at paragraph 1 of the application) in respect of which the Tribunal has made formal findings of fact having considered the oral and documentary evidence and/or to alleged factual matters which do not, in any event, effect the Tribunal's conclusions regarding the fairness and/or lawfulness of the Claimant's dismissal. It is not therefore in the interests of justice for the Tribunal to consider such matters further.

The Claimant's submissions relating to alleged inconsistency of treatment (paragraphs 19 – 21 of the application)

9. The Claimant's claim form did not contain any allegations of inconsistent treatment. Further, the issues in this case were formally identified in a Case Management Order dated 4 January 2019. The agreed issues did not include any reference to any allegations of alleged inconsistency of treatment. The Tribunal refused, for the reasons explained at paragraphs 11- 13 of the Judgment, to allow the Claimant's application to amend his claim to pursue allegations of alleged inconsistency of treatment. Any challenge to such decision would therefore be a matter for the Employment Appeal Tribunal to determine.
10. Further the Tribunal is satisfied, having regard in particular to the matters identified above, that it is not appropriate/ in the interests of justice to allow

the Claimant to raise at this stage the further allegations of inconsistency of treatment referred to at paragraphs 19 and 20 of the application.

The findings and conclusions of the Tribunal

11. The Judgment contains a detailed explanation of (a) the reasons why the Tribunal determined that the Claimant's dismissal was fair (at paragraphs 118 -147 of the Judgment). When reaching such conclusion, the Tribunal considered the fairness of the overall disciplinary and appeal process. Further, the Tribunal gave an explanation of why it did not consider that the matters identified at paragraphs 132 – 133 of the Judgment, relating to the conduct of the disciplinary process, rendered the Claimant's dismissal unfair and (b) the reasons why the Tribunal considered the Claimant's dismissal without notice to be lawful (including the nature and reasons for its findings on the relevant factual matters in dispute (paragraphs 89 – 93, 96 – 97 and 103 – 105 and 152 – 161 of the Judgment). Any challenge to such findings / conclusions would therefore be a matter for the Employment Appeal Tribunal to determine.

The Claimant's contentions regarding the attendance at the Hearing of Mr Squires and related matters (paragraph 81 of the application)

12. The Claimant contends (at paragraph 81 of the application) that the Tribunal refused an application by him to call Mr Squires (then Acting HART Operations Manager at the Respondent) as a witness at the Hearing. Mr Squires was not originally identified as a witness for the Claimant. The Claimant informed the Tribunal during the course of the proceedings that he understood that the Respondent had approached Mr Squires to ascertain whether he would be prepared to give evidence on its behalf and that he was also considering the possibility of seeking Mr Squires' attendance at the Hearing to give evidence regarding in particular the Respondent's alleged refusal to allow the Claimant to call witnesses at the disciplinary hearing. The Tribunal explained to the Claimant the process which the Claimant would be required to follow if he wished to apply for a witness order in order to secure the attendance of Mr Squires at the Hearing. No application was however made by the Claimant (or the Respondent) to call Mr Squires as a witness at the Hearing.

13. The Tribunal is, in any event, satisfied that the evidence of Mr Squires would not, in any event, have assisted it further in determining the fairness/ lawfulness of the Claimant's dismissal including in the light of the findings at paragraph 61 of the Judgment regarding Mr Squires' involvement in the matter which were taken into account by the Tribunal when considering the fairness of the disciplinary process (paragraphs 125 – 130 of the Judgment).

14. In all the circumstances the Tribunal is, satisfied that there is no reasonable prospect of the Judgment being revoked or varied and the Claimant's application is therefore dismissed.

Employment Judge Goraj
Dated 10 September 2019