



EMPLOYMENT TRIBUNALS

Claimant: Mr R Wagener

Respondents: 1. Commissioners for Her Majesty's Revenue & Customs
2. HM Treasury

JUDGMENT

The claimant's application for reconsideration of the judgment sent to the parties on 9 August 2019 is dismissed.

REASONS

The judgment and reconsideration application

1. At a preliminary hearing on 24 June 2019, I struck out the claimant's claim on the ground that it had no reasonable prospects of success. The claim had raised a single complaint of indirect age discrimination. I found that the claim had a fundamental flaw. The claimant could not show that he belonged to a disadvantaged age group. Put another way, the disadvantaged group to which the claimant said he belonged was not an "age group" within the meaning of section 5 of the Equality Act 2010 ("EqA").
2. Written reasons ("Reasons") for the judgment were sent to the parties on 16 July 2019. Owing to an administrative error, the judgment itself was not sent to the parties until 9 August 2019.
3. By e-mail sent on 20 July 2019, the claimant applied for reconsideration of the judgment. The essential ground of the reconsideration application was that I had misinterpreted section 5 of EqA in coming to my decision. His arguments were twofold:
 - 3.1. *The Driver Example* – In support of his interpretation of an "age group", the claimant had given a hypothetical example relating to age discrimination against drivers (see Reasons paragraph 48.3). On reconsideration, the claimant contends that I failed to distinguish meaningfully between that example and the circumstances of the claimant's case.

3.2. *The Homer Remitted Judgment* – The claimant contends that new information has come to light since the preliminary hearing. The information is contained in the employment tribunal’s reserved judgment in *Homer v. Chief Constable of West Yorkshire Police*, following remittal from the Supreme Court. The claimant relies on facts recorded in the reasons for that judgment. His argument is that those facts tend to show that an “age group” should be given the interpretation for which he contended at the preliminary hearing.

4. I now give the claimant’s application preliminary consideration under rule 72(1) of the Employment Tribunal Rules of Procedure 2013.

Relevant law

5. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment “where it is necessary in the interests of justice to do so”.

6. Rule 71 sets out the procedure for reconsideration applications.

7. By rule 72(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... the application shall be refused...”

8. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues.

Conclusions

9. The claimant’s application is polite and well argued, but, in my view, it has no reasonable prospect of causing the judgment to be revoked or varied. I address both of his arguments in turn.

The Driver Example

10. I addressed the Driver Example in paragraph Reasons paragraph 49.7. In that paragraph I sought to explain why the aggrieved driver would still have a remedy, even if his age group were defined by reference to current age. The driver would be able to bring a complaint of direct discrimination, based on past membership of the age group. The claimant’s reconsideration application has not changed my view about that. Even if my analysis of the Driver Example were wrong, I would still hold that the claimant could not define his age group in the way he seeks to do, for all the other reasons given at paragraph 49 of the Reasons.

The Homer Remitted Judgment

11. I have read the employment tribunal’s reserved judgment in *Homer*. It is important to remember that this judgment was confined to the issue of objective justification. As directed by the Supreme Court, the tribunal started from the premise that the respondent’s PCP had put Mr Homer’s age group at a disadvantage. From paragraph 26 of the reasons, it appears that the tribunal proceeded on the footing that Mr Homer had been put at the disadvantage because he was “an employee over the age of sixty” who could not obtain a law degree before normal retirement age.

12. The reasons record facts upon which the claimant now relies in support of his interpretation of section 5 of EqA. They do not alter my view of what the Supreme Court decided in *Homer*. Nor do they change my opinion of how to define an age group. The Supreme Court's judgment sets out the facts upon which it came to its decision. The facts on which the claimant now relies were not included. Nor is there anything in Baroness Hale's reasoning to indicate that the number of internal candidates with law degrees was a relevant factor in determining the age group.
13. It strikes me that what the claimant is really doing in this reconsideration application is raising further arguments in support of his contention that his interpretation of section 5 of EqA is correct and mine is wrong. In my view, the proper forum for determining that question is the Employment Appeal Tribunal and not an application for reconsideration.
14. The claimant's application is therefore dismissed.

Employment Judge Horne

Date: 9 September 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

1 October 2019
FOR THE TRIBUNAL OFFICE

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