Case No: 2411529/2018

EMPLOYMENT TRIBUNALS

Claimant: Mr D Taheri

Respondent: Aprite (GB) Limited t/a Westway Nissan

RECONSIDERATION JUDGMENT

The claimant's application dated 22 October 2019 for reconsideration of the judgment sent to the parties on 14 October 2019 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in an email dated 22 October 2019.

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. 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. The email from the claimant contains 12 numbered points. I will address them in groups, some out of sequence.

8. Points 1, 10 and 11 allege that there was no fair hearing. There is no merit in these points. The hearing was conducted fairly. I have no contact with Mr Grundy save for those occasions upon which he appears as a representative in Tribunal hearings.

9. Points 2 and 3 are not matters upon which I can comment. In any event the tribunal made its decision solely for the reasons set out in writing.

10. Point 4 is misconceived. Employment Judge Sherratt thought that the case had reasonable prospects of success but he had not heard any evidence. The tribunal I chaired heard all the evidence.

11. Point 5 takes the matter no further. The claimant could have sought to introduce this tribunal decision from 2012. It would not have been relevant in any event.

12. Points 6 and 7 are attempts to re-open issues of fact and credibility on which the Tribunal heard evidence from both sides and made a determination explained in the written reasons. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact or a finding as to credibility just because the claimant wishes it had gone in his favour.

13. Point 8 concerns the costs order. The tribunal had regard to the information provided about the claimant's ability to pay. Point 9 also suggests that "without prejudice" material should not have been taken into account as to costs. The letters from the respondent were "without prejudice save as to costs"

– i.e. not without prejudice at all when it came to costs.

14. Point 12 takes the matter no further.

Conclusion

15. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

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Employment Judge Franey

12 November 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

13 November 2019

FOR THE TRIBUNAL OFFICE