



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Okoro

v

Action for Children

JUDGMENT on RECONSIDERATION APPLICATION

The Respondents application dated 13 November 2019 for reconsideration of the Judgment sent to the parties on 1 November 2019, is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons:

1. Rule 70 of the Employment Tribunal Rules of Procedure 2013 empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any Judgment where it is necessary in the interests of justice to do so. Rule 71 requires that any application for reconsideration must be presented in writing within 14 days of the date on which the written record, or other written communication, of the original decision is sent to the parties, or within 14 days of the date that the written reasons are sent (if later). Rule 72 requires that an Employment Judge shall consider any application made under Rule 71 and if the Judge considers that there are no reasonable prospects of the original decision being varied or revoked the application shall be refused.
2. The starting point clearly has to be the decision the Tribunal reached after the hearing in September this year. I have re-read it. I consider that the Tribunal set out in detail the reasons for its Judgment. Should these matters be examined on appeal, it would be for the Higher Tribunal to say whether

those reasons and the decision can stand. Any suggestion that the findings were perverse or that the Tribunal erred in Law is a matter for appeal.

3. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals' powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. At paragraphs 27 – 38 of her Judgment, Her Honour Judge Eady QC set out the legal principles which govern reconsideration applications, and observed,

“The interests of justice have thus long allowed for broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.”

4. The Claimant's application for reconsideration proceeds under four main strands, namely that the Tribunal was unfairly biased towards the Respondent; that it didn't follow the correct procedure and this affected the decision; that it didn't apply the correct law; and that it had no evidence to support its decision. Whilst I do not accept that the members or I circumvented the Law as the Claimant alleges in order to come up with an unfair and biased decision, as noted already, the third and fourth strands are ultimately matters for the Higher Tribunal.

Bias

5. In his application for reconsideration, the Claimant refers to me as an “unscrupulous Judge” and complains that the decision was biased. He does not elaborate as to why I am said to be unscrupulous nor does the application explain why the Tribunal was “attached” to emotional submissions allegedly made by Counsel on behalf of the Respondent. Whilst my notes and recollection do not support the Claimant's account of Counsel's submissions, the Tribunal's Judgment sets out the matters to which the Tribunal had regard in reaching its decision; the fact that the Respondent is a charity was noted briefly at paragraph 9 of the Judgment, but its charitable status had no bearing on the Tribunal's Judgment. As the Judgment sets out, the Tribunal came to a decision on the evidence and by making findings of fact and applying the Law. The Tribunal did not have regard to extraneous or irrelevant considerations in coming to its Judgment. Notwithstanding the Respondent's charitable status, the Tribunal made an award of compensation in favour of the Claimant and also made significant allowances for the Claimant in spite of his unfounded allegations that the Respondent had fabricated documents.
6. In his application for reconsideration, the Claimant alleges that I “jump[ed] to the defence of Respondent by say[ing] that the forged email was as a result of misspelling which was absolutely nonsense”. There was no forged

email. I refer to paragraph 33 of the Tribunal's Judgment. This was a decision of the Tribunal following careful discussion in Chambers.

7. I have conferred with the members regarding the Claimant's allegation that he was treated differently to the other witnesses. I am satisfied that the hearing was conducted in accordance with the overriding objective and that the Claimant was afforded the same courtesy and respect as all the witnesses. It is not accepted that the Claimant was treated differently or that the Tribunal stared at him during cross-examination. The Tribunal listened carefully as each witness gave their evidence.
8. In the course of the hearing the Claimant commented that I had looked at the clock on the wall. He did not suggest at the time that this evidenced I was biased or not paying attention. He now says that "The Judge smiled and said "I am the Boss and I can look at the clock when I like"". I did not make any such comment. Instead, I explained to the Claimant that one of my responsibilities as a Judge is to manage the hearing so that it is heard within the allocated time. I might add that it is also my responsibility to manage breaks in the proceedings. I informed the Claimant that he should feel able to ask questions of the witnesses and did not bring any pressure to bear upon the Claimant to conclude his cross examination of the Respondent's witnesses. During the hearing I specifically asked the Claimant to let the Tribunal know whether there were any additional points he wished to clarify.
9. The Claimant makes complaint about a log book kept at his workplace. The Claimant initially believed that entries in the log book would support aspects of his evidence. In the course of the hearing, Counsel for the Respondent reported that the log book had been located, its whereabouts previously having been unknown. The Tribunal indicated that the log book should be brought to Tribunal, albeit that the Tribunal would only be concerned with those entries that related to the specific issues in dispute; the Claimant was indicating a wish to embark upon a more wide ranging review of its contents. When Counsel for the Respondent told the Tribunal that he had a copy of an extract from the log book pertaining to a specific day about which evidence had been given, the Tribunal proposed a short break to enable the Claimant to review the extract. He refused that opportunity and stated that he no longer wished to inspect the log book. That was his decision and he cannot complain about the matter now. It certainly does not evidence bias on the part of the Tribunal. On the contrary the Tribunal was receptive to admitting the log book as evidence notwithstanding the hearing was underway.

Procedural irregularities

10. The Claimant complains that the Tribunal admitted Ms Laffen's evidence. I refer to paragraph 7 of the Reserved Reasons. The Tribunal had been minded not to admit her statement and evidence, but did so because the Claimant stated that he did not object to its admission. In which case he cannot complain about the matter now.

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11. For all the reasons set out above, I consider that there are no reasonable prospects of the original decision being varied or revoked. In the circumstances the application for reconsideration is refused.

Employment Judge Tynan

Date:05.01.20.....

Sent to the parties on:15.01.20.....

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For the Tribunal Office