EMPLOYMENT TRIBUNALS

Claimant: Mr Paul Newton

Respondent: Weaver Vale Housing Trust

HELD AT: Liverpool **ON:** 17 January 2020

BEFORE: Employment Judge Shotter

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that –

1. The claimant's application for a reconsideration hearing to set aside the judgment promulgated on 24 December 2019 is refused.

2. The respondent's cost application will take place before Judge Shotter at a cost hearing with an estimated length of hearing of 1 day at the Employment Tribunals **3rd Floor, Civil & Family Court Centre, 35 Vernon Street, Liverpool, L22BX on 5 August 2020** starting at 10 am or as soon as possible afterwards.

REASONS

1. This is a preliminary consideration of the claimant's application for a reconsideration.

2. The claimant has requested a reconsideration of the judgment promulgated on 24 December 2019 by email received 6 January 2020.

3. The basis of the claimant's application is that Chris Dunwoodie, an ex-employee of the respondent who gave evidence on behalf of the respondent at the liability hearing, was not a credible witness, the appeal outcome was predetermined by Wayne Gales, the respondent had not carried out a thorough investigation and the claimant's witness, Mrs Newton was unwell and had she been well the oral evidence given by her would have been different. These are all matters that were considered and

addressed by the Tribunal at the liability hearing and when it gave oral judgment and reasons to the parties. It is not in accordance with the overriding objective for the judgement to be reconsidered and revolked merely because the claiamnt repeats the points he has already made in order to persuade the Tribunal to find in his favour.

4. Under Rule 70 of the Employment Tribunal Rules a judgement can be reconsidered where it is *necessary in the interests of justice* to do. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation and reconsiderations are a limited exception to the general rule that judgements should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry. In *Stevenson v Golden Wonder Ltd 1977 IRLR 474, EAT*, Lord McDonald said with reference to review provisions that they were 'not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before'.

5. The Tribunal's discretion must be exercised judicially and with regard not just to the interests of the parties seeking the reconsideration, but also to the other parties, the requirement for finality to the litigation and giving effect to the overriding objective. It is the Tribunal's view that the claimant in his email of 6 January 2020 is attempting to rehearse the evidence, and the basis of his application is unclear on why it is in the interests of justice to reconsider the judgment other than it was unfavourable to the claimant. Having applied the overriding objective in rule 2, which requires the Tribunal's discretion to be exercised in a fair and just way, based on this preliminary consideration, there is no reasonable prospect of the original judgment being varied or revoked.

6. The claimant has not shown it is in the interest of justice to reconsider the Judgement and Reasons promulgated on 24 December 2019. For example, the claimant cites Mr Dunwoodie, arguing he was an unreliable witness when the Tribunal gave comprehensive reasons why it preferred the evidence given on behalf of the respondent to that given by the claimant and Mrs Newton. The Tribunal's oral reasons set out the following:

    6.1 "In oral submissions the claimant argued Chris Dunwoodie was not a credible witness on the basis that the "Disciplinary Time Line" he produced during the hearing and marked "R1" from various notes, did not include any reference to the telephone conversation he had with Mrs Newton and his statement made on cross-examination that he did not have a telephone conversation with the claimant prior to discussing the case with Dan Smith on 1 October 2018. The claimant is correct in that Chris Dunwoodie made no reference to his telephone call with Mrs Newton in his witness statement or the Disciplinary Time Line, and on cross-examination Chris Dunwoodie indicated the Disciplinary Time Line referenced important events, and the telephone call with Mrs Newton did not fall into that category. The Tribunal accepted this

evidence as credible; the parties agree there was a telephone conversation, the dispute between them is the date and content. Taking into account the claimant's evidence in relation to what was said to him by Dan Smith concerning his appeal and settlement offer, the Tribunal preferred the more cogent evidence of Chris Dunwoodie that he can recall being told the claimant was walking the dogs and he would not have given any indication the claimant's appeal was going to succeed in the knowledge that Wayne Gales as of 28 September 2018 was "leaning more heavily" towards confirming the claimant's dismissal. Wayne Gales' corroborated this evidence, and the Tribunal took the view that the words allegedly used by Dan Smith as described by the claimant also supported this view. There would be no need to negotiate a settlement if Wayne Gales' intention was to reinstate the claimant on appeal.

6.2 There is a conflict as to whether the claimant spoke with Chris Dunwoodie on the 1 October 2018. In oral submissions the claimant referred to his witness statement in which he records Chris Dinwoodie informing him "Wayne Gales was waiting for one more thing before he made his decision, but I'm sure you will be fine." In oral evidence on cross-examination Chris Dinwoodie could not recall the conversation, and could only recall the one he had with Mrs Newton because of her reference to the dog. He confirmed that he was waiting to speak to Dan Smith with the offer and that was the only matter outstanding. Taking into account the fact that both parties agree Chris Dinwoodie made a without prejudice offer to Dan Smith, and the claimant's description of his discussion with the union representative about the offer, it seems more likely than not that Chris Dinwoodie had a conversation with the claimant informing him that Wayne Gales was waiting for one more thing before he made his decision, but he gave no assurances to the claimant that his appeal would be successful. It is illogical that Chris Dunwoodie would enter into without prejudice negotiations at the bequest of Wayne Gales if the latter had made a decision to grant the claimant his appeal and reinstate him. It also made no sense for Dan Smith to have indicated to the claimant, following the without prejudice discussion, that in his view the appeal may not be overturned.

6.3 In short, the Tribunal found the respondent's witnesses to be credible and cogent, it found on the balance of probabilities the claimant's evidence was not always credible as set out below."

7. In conclusion, it is not in the interests of justice for the Tribunal to list this matter for a reconsideration hearing and the claimant's application for a reconsideration is dismissed.

8. Turning to the respondent's application for a costs order, the parties will confirm to the Tribunal when the case management orders set out in the Record of Preliminary Hearing sent to the parties on 24 December 2019 have been complied with.

Employment Judge Shotter

17.1.2020

_____

JUDGMENT AND REASONS SENT TO THE PARTIES ON

28 January 2020

FOR THE TRIBUNAL OFFICE