



EMPLOYMENT TRIBUNALS

Claimant: Mr C Daley

Respondent: Vodafone Automotive Ltd

Employment Judge Tom Ryan

JUDGMENT ON RECONSIDERATION

The judgment of the Tribunal is that the application for reconsideration is dismissed.

REASONS

1. This is an application for reconsideration of the judgment sent to the parties on 25 October 2019 (and written reasons sent to the parties on 29 January 2020).
2. By that judgment and for those reasons the claimant's complaint of disability discrimination was dismissed. The complaint of unfair dismissal was upheld but the tribunal made no award of compensation to the claimant.
3. The tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where "it is necessary in the interests of justice to do so." Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.
4. Under rule 71 an application for reconsideration must be made within 14 days the date on which the judgment (or written reasons, if later) was sent to the parties.
5. The approach to be taken to applications for reconsideration was set out in the recent case of **Liddington v 2Gether NHS Foundation Trust** UAEAT/0002/16/DA in the judgment of Simler P. The tribunal is required to:
 - 5.1. identify the Rules relating to reconsideration and in particular to the provision in the Rules enabling a Judge who considers that there is no reasonable

prospect of the original decision being varied or revoked refusing the application without a hearing at a preliminary stage;

5.2. address each ground in turn and consider whether is anything in each of the particular grounds relied on that might lead ET to vary or revoke the decision; and

5.3. give reasons for concluding that there is nothing in the grounds advanced by the Claimant that could lead him to vary or revoke his decision.

6. In paragraph 34 and 35 of the judgment Simler P included the following:

“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 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. Tribunals have a wide discretion whether or not to order reconsideration.

Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

7. The judgment and reasons were given orally 24 October 2019.

8. On 25 October 2019 the claimant’s daughter Mrs Barton, who represented the claimant at the hearing, wrote to the tribunal asking for the tribunal to “review the decision”. Mrs Barton sent a copy of a report dated 7 March 2019 on the claimant’s health from his GP, Dr Hussain; a copy of the judgment of the EAT in *Baldeh v Churches Housing Association of Dudley & District Ltd.* UKEAT/0290/18/JOJ and a document which appears to be from an NHS website “Why am I so angry?” At the same time Mrs Barton asked for the tribunal’s reason in writing.

9. When the reasons were sent out in writing I caused the tribunal staff to write to the claimant asking him to submit any further grounds for an application for reconsideration within 14 days.

10. On 5 February 2020 Mr Daley sent in a letter addressed to me which appears to contain the grounds for the application. He also attached:

10.1. Copies of the earlier submitted documents from Dr Hussain and the NHS website;

10.2. A copy of the judgment in *Brito-Babapulle v Ealing Hospital NHS Trust* UKEAT 0358/12/BA; and

- 10.3. A Mild Cognitive Impairment leaflet published by Northumberland, Tyne and Wear NHS Foundation Trust.
11. I have considered these documents. I have focussed on the letter setting out the grounds. The supporting documents which I accept might be material if a tribunal were considering the claim afresh do not assist the claimant in making out his application for reconsideration. Although his application does not state this I infer that his argument is that it is in the interests of justice that the judgment be revoked and the case reheard because of the matters that he sets out and which I summarise below.
- 11.1. Under the heading “Clarification of Disability” the claimant says that in the light of the anger management leaflet the respondent failed to consider mitigating factors and referred to the Ealing Hospital case.
- 11.2. Under the heading “Claim that the outcome by the respondent was prejudged.” The claimant sets out an argument about the conclusion of the disciplinary officer and the process.
- 11.3. Under the heading “Failure to complete a thorough investigation” the claimant alleges that the investigation was “not carried in accordance with the ACAS guide”. It is clear from the claimant’s document that he is referring to the investigation at this point rather than the disciplinary/appeal process.
- 11.4. The next heading is “Claim of failure to carry out a fair appeal”. This appears to be a further argument in relation to the fairness of the appeal process.
- 11.5. The last heading is “Clarification of the issue”. This appears to refer to a finding of fact made in the judgment. The “issue” in this case is the matter which the claimant raised with his colleague Mr Ainsworth and which was the factual background to the matters that followed leading to the disciplinary process and the claimant’s dismissal.
12. I recognise that the claimant is a litigant in person and is, understandably, seeking to have his case reconsidered and have it heard afresh by a different tribunal. Whilst he does not say this in any of his correspondence, I assume in his favour that that is what is asking the tribunal to do. I note that in his application he does not distinguish between the complaint of disability discrimination which was dismissed and the complaint of unfair dismissal which was upheld albeit without remedy being awarded. Furthermore, I note that of the 5 matters that I have summarised only the 1st specifically refers to disability.
13. In my judgment the two paragraphs which I have quoted above from Simler P are entirely on point in analysing the way in which the claimant sets out his application. Each of the matters which the claimant raises are attempts to reargue matters that were raised in the tribunal hearing. I consider that the claimant’s application falls squarely within the description which the EAT in **Liddington** stated should not give rise to an application for reconsideration, “in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice”.

14. If the claimant's points or indeed any further argument that he might mount give rise to a discernible error of law then his path to correct that lies, not by way of an application for reconsideration, but by way of an appeal to the Employment Appeal Tribunal.
15. I consider that the claimant has not provided any sustainable basis upon which a tribunal properly directing itself could consider that it was in the interests of justice to reconsider the judgment and vary it or revoke it and order a fresh hearing.
16. For those reasons I refuse the application for reconsideration at this preliminary stage.

Employment Judge Tom Ryan

Date 19 February 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
20 February 2020

FOR THE TRIBUNAL OFFICE

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