



EMPLOYMENT TRIBUNALS

Claimant: Mr C Vernon
Respondent: CEG Packaging Limited

JUDGMENT

The respondent's applications dated 6 and 7 February 2020 for reconsideration of the judgment sent to the parties on 3 February 2020 are refused.

REASONS

Issues

1. This is an application made by the respondent to reconsider the Judgment sent to the parties on 3 February 2020. The grounds of that application are set out in the emails from the respondent's representative dated 6 and 7 February 2020. They are two-fold.
2. Firstly, that the award to interest should be reconsidered. Summarised, the grounds of the application are that the parties had no opportunity to make submissions upon the award of interest; that the length of time for this matter to get to a final hearing was not the parties' fault; that the practice direction is that interest should be only considered; that only the harassment claim was successful; that the award of compensation in the middle Vento band was mostly because of the actions of an ex-employee who the respondent could not locate; and that the respondent has suffering a detriment by the award of interest taking the injury to feelings award to beyond the middle Vento band.
3. Secondly, that the Tribunal judgment was flawed in law as the tribunal should not have found any of the acts of harassment (other than one)

proved before the respondent had knowledge of the disability on 9 July 2018. As such the award should be reduced to the lower Vento band.

The Law

4. The Employment Tribunal (Constitution & Rules of Procedure) Regulations provide at Schedule 1 Rules 70 to 73 the rules and process by which judgments of the Tribunal may be reconsidered.

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

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 (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge’s provisional views on the application. (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations. (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

5. The approach to be taken to applications for reconsideration was set out in the case of Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16/DA in the judgment of Simler P. The tribunal is required to:
 - a. 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;

- b. 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
- c. 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.

Findings and decision

6. I have considered the application made by the respondent under Rule 71. I consider that for the reasons below, there is no reasonable prospect of the original decision being varied or revoked. As such the application is refused.

Interest

7. The claimant made a claim of interest within his Schedule of loss and the parties were given the opportunity to make submissions on all issues relating to remedy at the final hearing. The claimant made representations on the point but the respondent did not. The Tribunal gave full consideration of matters it considered relevant to whether interest should be awarded upon the injury to feelings award and determined that it should. It applied the appropriate rate of 8% from the date of the first act of discrimination. The additional matters raised by the respondent in its present application are not matters which persuade me that there are reasonable prospects of the original decision being varied or revoked.

Knowledge

8. In respect of the application to reconsider the judgment on the basis that the respondent had no knowledge of the claimant's disability when the acts of harassment were committed, the respondent is reminded of the definition of harassment within section 26 of the Equality Act 2010, specifically that the unwanted conduct should relate to the protected characteristic. The respondent is referred to paragraph 44 of the Judgment sent to the parties on 3 February, where the Tribunal explains its reasons why it found that the conduct of the respondent related to the claimant's disability. Knowledge of the disability itself is not a requirement for the purposes of a claim of harassment.

Employment Judge Benson

Dated 23 March 2020

Case No: 2416883/2018

JUDGMENT SENT TO THE PARTIES ON

31 March 2021

FOR THE TRIBUNAL OFFICE