



EMPLOYMENT TRIBUNALS

Claimant: Reverend A. A. Pereira

Respondent The Bristol Diocesan Board of Finance Ltd (R1)
Bishop of Bristol (R2)
Oliver Home (R3)
Christine Froude (R4)

Heard at: Bristol **On:** On Paper

Before: Employment Judge P Cadney

Members:

Representation:

Claimant: Written Representations
Respondent: Written Representations

RECONSIDERATION JUDGMENT

The judgment of the Tribunal is:

The application to vary or revoke the Judgment is dismissed.

REASONS

1. On 7th November 2019 I heard a Preliminary Hearing following which I dismissed the claimant's claims of victimisation on withdrawal, and his claims of direct discrimination. I also rejected an application to amend to add claims of harassment. The reasons for those decisions are set out in the Judgment. The claimant has sought reconsideration in respect of the latter two decisions. The respondent has set out in writing its response to the claimant's application.

Principles

2. Rule 70 of the ET Rules provides a general power to reconsider a Judgment, subject to the provisions of Rules 71 -73. An application will only be considered where “it is in the interests of justice” to do so. The respondent draws my attention to the importance of finality in litigation (*Ministry of justice v Burton [2016] ICR 1128* citing the earlier judgment of Underhill J in *Newcastle Upon Tyne City Council v Marsden*) and that reconsideration is not simply an opportunity for a losing party to have a second bite at the cherry (para 17 Marsden above).

Primary Conclusions

3. In essence the respondent submits that the claimant is simply seeking an impermissible second bite at the cherry, and attempting to re-argue points that have already been considered; and that in this case the interests of justice do not require a reconsideration of the earlier decision.
4. In my judgment this must in principle be correct. There is nothing in the claimant’s reconsideration application which was not before me at the original hearing, and if the claimant believes my decisions to be wrong the appropriate course is to seek to appeal them.
5. That would itself be sufficient to dispose of the application but for completeness sake I will deal with the points the claimant raises. The first two, the time point and that in relation to vicarious liability appear to relate only to the amendment application. The cogency of evidence point is relevant to both decisions.
6. Before dealing with the claimant’s points, my full reasons are set out in the earlier decision but in summary I concluded that in relation to the direct discrimination claims that they were a) out of time b) and that having set out the competing evidence and submissions that I took the view that the balance of prejudice favoured the respondent and that I was not persuaded to exercise the discretion to extend time. In relation to the amendment application similar considerations applied. The underlying events were very substantially out of time and the cogency of the evidence was therefore similarly affected. Moreover, it was counterintuitive and self-contradictory to refuse to extend time in respect of the existing allegations, but then to permit an amendment in respect of similar allegations falling within the same timeframe (2014 – 2016). For those reasons I was not persuaded to permit the amendment.

7. Time – The claimant contends that my conclusion that the matters he sought to add by way of amendment were out of time is an error of law. The basis for this is that he only received the documents on which he relies for the amendment in the course of this litigation, and submitted the application very promptly thereafter. As the respondent points out, correctly in my view, this confuses two separate things. The question of whether a claim is out of time is judged against the date of the alleged act of discrimination and the date the claim was brought. If the former is more than three months prior to the latter, the claim is on the face of it out of time. The fact that a claim was brought reasonably promptly after obtaining the documents may be a factor to consider in relation to the question of extending time, but does not make the claims themselves in time. In particular, the proposition that the claimant sets out at paragraph 1(iii) of the application, that had he submitted a new claim in August 2019 rather than application to amend the claim would have been in time and no issues as to time limits would have arisen is incorrect. Exactly the same issues would have needed to have been determined.

8. Vicarious Liability – I do not understand this part of the application. Neither the decision to dismiss the direct discrimination claims nor to reject the amendment was based upon any conclusion or assessment of the question of vicarious liability. The claimant appears to submit that at paragraph 30 I have made a finding that in respect of two of the proposed claims that I have made a finding that no vicarious liability could attach to any of the existing parties. This is incorrect. I have recorded the respondents' submissions but this did not form any part of my reasoning for rejecting the amendment.

9. Cogency of Evidence - One of the central issues before me was the extent of any prejudice to the respondent if the delay affected the cogency of the evidence. My conclusion was that the delay affected the cogency of the evidence very significantly for the reasons set out in the decision. Nothing in the reconsideration application was not before me at the earlier hearing, or alters that conclusion.

Employment Judge P Cadney

Dated: 7 April 2020

Judgement sent to parties: 14 April 2020

FOR THE EMPLOYMENT TRIBUNAL