EMPLOYMENT TRIBUNALS

Claimant(s): **Mr J Fite**

Respondent(s): **First4Care Limited**

Heard at: **Leeds**
Before: **Employment Judge Deeley**
On: **24 April 2020**

Representation
Claimant: Attendance not required
Respondent: Attendance not required

JUDGMENT

1. The claimant's application for reconsideration of the judgment relating to his application for interim relief is refused and dismissed pursuant to Rule 72 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

2. The claimant applied by email dated 10 April 2020 for a reconsideration of the judgment promulgated on 27 March 2020 (the "**IR Judgment**"), following the hearing of the claimant's interim relief application on 25 March 2020 (the "**IR Hearing**"). The respondent provided comments (on its own initiative) on the application on 14 April 2020.

3. The claimant has put forward two main arguments in support of his application:

    3.1. that the original decision should be reconsidered because the claimant contends that:

3.1.1. *"the judgment flawed by errors of fact and errors of law"*;

3.1.2. *"the reasons given for refusing the application did not sufficiently explain the decision"*; and/or

3.1.3. *"the decision was perverse"*; and

3.2. that the original decision should be reconsidered because the claimant contends that: *"It was an error not to have adjourned the hearing until the tribunal could consider the relevant findings of fact made by the previous tribunal"* (referred to below as the claimant's "**Adjournment Argument**"). (The reference to the 'previous tribunal' is the claimant's previous Tribunal claim against the respondent referred to below).

4. Rules 70-72 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (the "**2013 Rules**") set out the requirements for a reconsideration application. I note that Rule 70 permits the Tribunal to *"reconsider any judgment where it is necessary in the interests of justice to do so"*. The EAT confirmed in *Outasight VB Limited v Brown UKEAT/0253/14* that the caselaw guidance relating to the equivalent 'review' provisions under the previous 2004 Rules also applied to the 2013 Rules. This guidance includes:

4.1. that public policy requires that there must be finality in litigation;
4.2. a failure by a party's representative to draw attention to a particular argument will not generally justify a review (referred to as a reconsideration under the 2013 Rules);
4.3. *'in the interests of justice'* means the interests of justice to both sides.

5. The legal tests that I had to consider at the IR Hearing are set out at paragraphs 6-11 of the original decision. I noted in the original decision that the respondent had conceded that the claimant had made a protected disclosure on 7 May 2019. The parties agreed that there was only one question for determination at the IR Hearing, i.e. was whether it was *'likely'* (or a *'pretty good chance of success'*) that a future Tribunal, when determining the claim, would find that the reason or principal reason for the claimant's dismissal was the protected disclosure that the respondent accepted that he made on 7 May 2019.

6. I also noted at paragraph 9 of the original decision was that my role was to make *"a broad assessment on the material available to try to get an understanding of the evidence and to make a prediction of what is likely to happen at the eventual substantive hearing of these claims"*. I noted that I did not have the benefit of hearing witness evidence (as per Rule 95 of the 2013 Rules) and that I was not making any findings of fact. My assessment was based on the documentary evidence referred to by the parties' representatives at the IR Hearing only.

7. The claimant has stated that there are several points in the original decision which he contends amount to errors of fact. However, much of the claimant's reconsideration application appears to consist of additional submissions relating to the documentary evidence considered during the IR Hearing. For example, the claimant refers in detail to a report commissioned by the Local Authority Designated Officer in August 2019 (referred to by the claimant as the "BM Report"). Both representatives referred to the BM Report in detail during their submissions and I considered the pages to which they referred before reaching the IR Judgment.

8. It is not in the interests of justice to permit the claimant's representative to advance further submissions on the documentary evidence that was considered during the IR Hearing. I have therefore limited my comments to those parts of the claimant's reconsideration application which refer to specific points in the IR Judgment which he contends amount to errors of fact. These are as follows:

    8.1. **Paragraph 12 of the reconsideration application** states that the original decision made errors because the Tribunal in the Detriment Claim reached different factual findings. However, the written reasons for the Detriment Claim had not been promulgated at the time of the IR Hearing and could not form part of the documentary evidence at the IR Hearing (except to the extent agreed by the parties, as recorded at paragraph 4 of the IR Judgment);

    8.2. **Paragraphs 16 and 17 of the reconsideration application** contend that the paragraph 21 of the original decision fails to attach sufficient weight to the conclusions of Ms Murphy's report. However, I considered the pages in Ms Murphy's report that the claimant's and the respondent's representatives referred to during the IR Hearing before I reached the original decision (see paragraph 15 of the IR Judgment);

    8.3. **Paragraph 29 of the reconsideration application** states that: *"The Tribunal was wrong at para 21.3 to state 'the claimant's representative did not present any evidence to suggest that they were influenced by Ms C Dodds'.* This wording has been taken out of context. Paragraph 21 of the IR Judgment notes that Ms Murphy's report had not been provided to either of the HR consultants who prepared the respondent's internal investigation and the disciplinary reports. Paragraph 21 then goes on to note other points regarding the HR consultants' investigation and disciplinary reports, including paragraph 21.3.

9. The claimant's reconsideration application does not identify:

    9.1. any specific errors of law that he contends have been made in the IR Judgment;

9.2. why he contends that the reasons set out in the original decision were insufficient. The claimant refers to the case of *Al Qasimi v Robinson* UKEAT/0283/17. However, the question for the EAT in that case was whether the Tribunal's reasons addressed the issue of whether the claimant's disclosures were made in the public interest. I did not need to consider this issue at the IR Hearing because the respondent had already conceded that the claimant had made a protected disclosure; or

9.3. any other grounds on which he contends that the original decision was perverse.

Claimant's Adjournment Argument

10. The claimant sets out the reasons why he contends that the IR Hearing should have been adjourned at paragraph 14 of his application:

> *"14. It was an error not to have adjourned the hearing until the tribunal could consider the relevant findings of fact made by the previous tribunal for the following reasons*
>
> - *An application for interim relief is, by definition, only available to claimants*
> - *The 'relief' is relief from dismissal*
> - *In the circumstances where it is the Claimant who asks for an adjournment to consider highly relevant findings of a Tribunal held just a few weeks earlier there can be no prejudice to the applicant."*

11. The claimant's representative was aware before the start of the IR Hearing that the full written reasons for the claimant's previous claim (case number 1804887/2019) (the "**Written Reasons**") had not yet been promulgated. He did not apply to postpone the IR Hearing before it started. As set out at paragraph 5 of the original decision, I sought representations from the parties during the IR Hearing regarding whether the IR Hearing should be adjourned until the Written Reasons were promulgated. Having considered the parties' representations and the factors set out below, I decided to proceed with the IR Hearing. The factors that I considered included:

11.1. the requirement on the Tribunal to determine an application for interim relief 'as soon as practicable' after receiving the application (s128(3) ERA). I noted that over three weeks had elapsed since this claim was submitted on 1 March 2020;

11.2. that I could revisit this issue if it became clear from the parties' oral submissions that the written reasons for the Detriment Claim would have a significant impact on the IR Judgment; and

11.3. the potential for a significant further delay, given the difficulties posed to the Tribunal's and the parties' working arrangements by the government guidance regarding the COVID-19 virus.

12. The claimant's representative did not apply to adjourn the IR Hearing, either during our discussion or at any later time during that hearing. I note that (as at the date of this Judgment), the written reasons for the Detriment Claim have not yet been promulgated.

13. The claimant's representative either raised or had the opportunity to raise the points set out at paragraph 14 of claimant's reconsideration application during the IR Hearing. The claimant's application fails to explain why it would be in the interests of justice to permit the claimant to raise these points again.

Conclusion

14. For the reasons set out above, I have concluded that it is not necessary in the interests of justice to reconsider the judgment promulgated on 27 March 2020 relating to the claimant's application for interim relief.

Employment Judge Deeley

Dated: 24 April 2020