Case No: 2413801/18

EMPLOYMENT TRIBUNALS

Claimant: **Mr Raymond Levy**

Respondent: **McHale Legal Limited**

JUDGMENT

The parties' applications dated 13 February 2020 for reconsideration of the liability and remedy judgments in this case are refused.

REASONS

1. I have undertaken preliminary consideration of the applications made by the claimant and the respondent, each dated 13 February 2020, for reconsideration of the remedy judgment dated 27 January 2020. The respondent also seeks to have aspects of the liability judgment reconsidered following receipt of written reasons in January 2020.

The law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment, under Rule 70 of the Employment Tribunal Rules of Procedure 2013.

3. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> *"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."*

4. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

"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 by 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."

5. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

6. Both parties' applications have been considered under Rule 72(1) which states:

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 […], the application shall be refused and the Tribunal shall inform the parties of the refusal.

7. I do not consider that it is in the interests of justice to reconsider the matters raised by the parties at a hearing. In summary, both parties are seeking to re-argue their positions by reference to facts and matters which were available and argued at the time of the liability and remedy hearings. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing.

The claimant's application

8. The claimant submits that the Tribunal's award of £6,000 for aggravated damages was not sufficiently high and suggests it be increased to £10,000. The claimant also argues for an increase in his compensation by £3,000 to reflect the potential stigma in the marketplace of having the Tribunal's liability judgment available to prospective employers, notwithstanding the absence of any evidence in his case to support that claim. Both points were argued at the remedy hearing, and there is no merit in reconsidering the decisions already made by the Tribunal.

The respondent's application

9. The respondent takes issue with a number of aspects of the Tribunal's liability and remedy judgments. Detailed arguments are set out, quoting selectively from the Tribunal's reasoning in an effort to reargue the case. The main grounds on which the respondent seeks reconsideration are summarised below.

10. In numerous instances the respondent says the Tribunal misinterpreted the facts. For example, it maintains that it would never have employed the claimant at all, relying on arguments aired extensively at the previous hearings. It disagrees with the Tribunal's conclusions on the connection between salary, experience and age. A number of points are put forward in an attempt to

reargue the position on injury to feelings, the respondent submitting that no order at all should have been made.

11. As for aggravated damages, the respondent maintains that on the information it had available at the time, its conduct was justified, or at the very least the amount of the award for aggravated damages was not warranted. It argues that the award should be reduced from £6,000 to £1,000. The respondent seeks to re-argue in detail the evidence previously heard about whether the claimant denied making any remark at interview. It maintains that it was correct to tell the claimant that it would report him to the SRA if it transpired he had lied to the Tribunal. The respondent submits that the Tribunal did not take into account aspects of the claimant's own behaviour, including a threat by him to report the firm to the SRA for non-compliance with directions. In its rehearsal of this detailed evidence the respondent omits reference to other factors which led the Tribunal to make this award.

12. All of the above arguments amount to a repetition of points previously aired during the course of the hearings, and disclose no reasonable grounds on which the Tribunal's decisions could be varied or revoked.

13. Finally, the respondent submits that interest on the aggravated damages award should be calculated from 10 September 2018, the date of the threat to report the claimant to the SRA, and not 8 March 2018. The Tribunal is satisfied that interest was correctly calculated under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996, as the calculation date for interest on non-pecuniary losses begins on the date of the act of discrimination, in this case the decision not to offer the job. The award for aggravated damages does not arise from a separate act of discrimination on 10 September 2018, but rather it is compensation reflecting the aggravated nature of the injury caused by the discrimination on 8 March 2018.

Conclusion

14. Having considered all the points made by the parties I am satisfied that there is no reasonable prospect of the original decisions being varied or revoked. Both the claimant's and the respondent's applications are refused under Rule 72(1).

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Employment Judge Langridge

DATE 14 August 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 August 2020

FOR THE TRIBUNAL OFFICE