



EMPLOYMENT TRIBUNALS

BETWEEN:

Mr L Mishra
Claimant

and

Galliford Try Services Limited
Respondent

Application for Reconsideration

Held at: In Chambers

On: 1 September 2020

Before: **Employment Judge R Clark**

JUDGMENT

1. The Claimant's application for reconsideration of the judgment dated 10 July 2020 is refused.

REASONS

1. On 9 July 2020, at an open preliminary hearing held via CVP, I gave an extempore judgment on the application for an order striking out the claimant's claim or, alternatively, imposing a deposit. In view of my conclusion, which was to strike out the claim, I caused full written reasons to be produced which were sent to the parties on 15 July 2020. By an email dated 28 July 2020, the claimant applied for the tribunal to "review the order and for clarification" which has been treated as an application for reconsideration.

2. Such an application falls to be considered under rules 70-72 of schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. By rule 71, an application for reconsideration must be made in writing within 14 days of the decision being sent setting out why reconsideration of the original decision is necessary. The claimant's email application was submitted in time.
3. By rule 70, the tribunal may reconsider any judgment where it is necessary in the interests of justice to do so and, if it decides to do so, may vary, revoke or confirm the original decision. There is now a single threshold for making an application. That is that reconsideration is necessary in the interests of justice. There must therefore be something about the nature of how the decision was reached, either substantively or procedurally, from which the interests of justice would be offended if the original decision was allowed to stand.
4. By rule 72(1) I am to give initial consideration to the prospects of the application which determines whether it is necessary to seek the views of the respondent and whether the matter can be dealt with on paper or at a further hearing before the same tribunal. Where the application can be said to carry no reasonable prospects of being varied or revoked, the rules dictate that I shall refuse the application without being required to consider the matter further.
5. The challenges raised by the claimant are in part inviting me to look again at the case and asserting that I should arrive at a different conclusion. The requirement for finality of litigation means such a "second bite of the cherry" is not in itself something which engages the interests of justice such that a reconsideration is necessary. To the extent that Mr Mishra's contentions suggest I misapplied the relevant tests, I have concluded it is not in the interest of justice to vary or revoke the judgment. The claimant's central argument is that I have made findings of fact, conducted a mini-trial and that there were disputes that should not have led me to conclude that the case fell within the test of no reasonable prospect of success. I do not accept findings of fact were reached or one party's case was preferred over the other. My decision needed to be put into a context, hence the need to explain the chronology of events. Most of the chronology derives from the contemporary documentation. At all stages I made clear I was seeking to understand how the claimant will advance his case, putting it at its highest. I have re-read the judgment and reasons to reflect further on the claimant's points, particularly as I acknowledge strike out of discrimination claims is rare. I am satisfied I kept in mind at all times the claimant's case and how it could possibly be proved against the necessary elements of a claim of direct discrimination under s.13 of the Equality Act 2010 which is the claim before the tribunal. I was alert to the low threshold necessary to take a case out of the test for strike out, particularly where there are material disputes of fact. In this case, I did not find the case being advanced at its highest was realistic, as opposed to fanciful, and thus there were no reasonable prospects of the claimant successfully discharging his initial burden. Recognising that discrimination claims are fact sensitive, I also considered how he would

structure any arguments that the tribunal should draw adverse inferences without it altering my conclusion.

6. Consequently, I refuse the application for reconsideration.

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Employment Judge R Clark
Date: 1 September 2020

JUDGMENT SENT TO THE PARTIES ON

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AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNALS