



EMPLOYMENT TRIBUNALS

Claimant: Mr D McCauley

Respondent: Granby Toxteth Development Trust Limited

JUDGMENT

The claimant's application for an extension of time to seek reconsideration is refused and his application for reconsideration of the Judgment promulgated on 11 April 2011 is dismissed.

REASONS

1. The "Code P" in the heading of this judgment indicates that it was a decision made on the papers without a hearing.

Background

2. On 28 February 2011 the claimant's complaint of unfair dismissal in this case was heard by an Employment Tribunal sitting in Liverpool chaired by Employment Judge Robinson. The claim was dismissed. A written Judgment with Reasons was sent to the parties on 11 April 2011.

3. The essence of the Tribunal's decision was that the redundancy dismissal had been handled fairly. There was a genuine redundancy situation, a pool for possible redundancies was established, the respondent warned and consulted the employees and allowed the claimant a chance to go through his marking. The Tribunal commented that his marks were far below those of the other two employees in the pool.

4. On 4 August 2020, more than nine years later, the claimant contacted the Tribunal seeking to re-open the decision. I treat that as the date of his application for reconsideration.

5. A response from the Tribunal indicated that he ought to provide an explanation for why time should be extended as well as the grounds on which he sought reconsideration of that Judgment. He provided further information with an email of 31 August 2020.

6. I did not consider it necessary to obtain comments from the respondent.

Time Limits for Reconsideration

7. The time limit for making an application for reconsideration of a Judgment expires 14 days after the written Judgment is sent to the parties (rule 71). The power to extend time appears in rule 5, which gives a general power to extend any time limit specified in the Rules. That power must be exercised in accordance with the overriding objective in rule 2, which is to deal with cases fairly and justly. Part of the overriding objective is to avoid delay, so far as compatible with proper consideration of the issues.

8. Finality in litigation is also part of a fair and just adjudication. That was confirmed by the Court of Appeal in **Ministry of Justice v Burton & Another [2016] EWCA Civ 714**.

9. The Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** said that:

“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...”

Grounds for Application to Extend Time

10. The claimant has provided a number of grounds on which he says the 14 day time limit should be extended to cover a period of more than nine years. He relies on the new appreciation of what he describes as the “perennial existence of unfairness to black individuals in relation to white individuals” which has recently resulted in the global reaction known as the Black Lives Matter movement. He suggests that bias on the part of his Tribunal was a major factor in the decision, and that the cultural climate in 2011 was not accommodating to a fundamental questioning of judicial integrity. He asserts that three High Court Judges have scrutinised his case but could not find fault with the reasoning in the decision. He says that this was reflective of the cultural attitudes at the time.

Decision

11. I have not been able to identify the input from the three High Court Judges to which the application refers. It may be that they were decisions by Employment Appeal Tribunal Judges at a sift stage. However, it seems to me that the application provides no good grounds for extending time. It is simply not correct to say that allegations of bias or a lack of integrity on the part of the Tribunal would not have been entertained in 2011. There are many examples of successful bias appeals in the years before that. There was nothing to stop the claimant pursuing an appeal on the basis of his assertion that the Tribunal was biased had he wished to do so. Indeed, it appears from his comment about High Court Judges that such an appeal may have been pursued unsuccessfully.

12. The proposition that a case concluded in 2011 can be reopened some nine years later because of a perceived shift in cultural attitudes is not an attractive one. It offends against the principle that there should be finality in litigation. A fair trial of these events in 2021 would not be possible given the passage of time.

13. For these reasons I have concluded that the application for an extension of time should be refused. The application for reconsideration is dismissed.

14. Had time been extended the application would have been dismissed in any event. There is no reasonable prospect of the decision in 2011 being varied or revoked upon reconsideration.

Regional Employment Judge Franey

28 September 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
6 October 2020

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