



EMPLOYMENT TRIBUNALS

Claimant: Mr L Mendez

Respondent: Plasflow Limited

JUDGMENT ON RECONSIDERTION

The respondent's application dated 27 November 2020 for reconsideration of the judgment which was sent to the parties on 17 November 2020 is refused pursuant to the Employment Tribunals Rules of Procedure, Rule 72(1) on the basis that the Employment Judge considers that there is no reasonable prospect of the Judgment being varied or revoked.

REASONS

1. Rule 70 provides that the Tribunal may on the application of a party reconsider any Judgment where it is necessary in the interests of justice to do so.
2. That might suggest that the scope for a Judgment being reconsidered was very broad. However the authorities indicate that that is not the case. The reconsideration process is not intended to provide parties with the opportunity of a re-hearing so that the same evidence can be rehearsed with different emphasis or further evidence adduced which was available previously. In colloquial terms it is not intended to give the parties an opportunity for a second bite of the cherry.
3. In the case of **Outasight VB Limited v Brown** [2015] ICR the EAT, whilst acknowledging that Employment Tribunals had a broad discretion to determine whether reconsideration of a Judgment was appropriate in the circumstances, went on to explain that such discretion must be exercised judicially "which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other

party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.”

4. One of the themes in the respondent’s seven page application is that on the evidence before it the Tribunal should have reached different conclusions to those it actually reached when applying the balance of probabilities test.
5. There is also the very serious allegation that the Tribunal was biased towards the claimant. If the respondent believes that to be the case that would be a ground for appeal rather than reconsideration.
6. The respondent accepts the Tribunal’s finding that the dismissal was unfair but contends that the Tribunal should have assessed the claimant’s contribution to that dismissal at more than 30%. In support of that contention the respondent is now seeking to put before the Tribunal in written form, submissions which it could have made at the conclusion of the hearing, rather than the oral submissions which were actually made at the hearing – and as summarized in our reasons for the reserved judgment.
7. In so far as the application relates to our conclusions in respect of race discrimination it refers to the Tribunal ‘electing’ to believe the claimant rather than Mr Oglesby, with a request that the Tribunal review whether that was a safe decision.
8. I am of the opinion that this reconsideration application is an attempt to re-run the case after the event.
9. Reference is also made to an additional document “that was not disclosed to you, due to the claimant only referring to the points outlined in documents during the Tribunal hearing which should be taken into consideration.” The attached document is a one page handwritten note but there is no explanation of who made this note, when or in what context. There is no explanation of how this document, if it had been “disclosed to us” would have assisted us in reaching our decision, or would have caused us to reach a different decision.
10. A potential basis for a Judgment being reconsidered would be if new evidence had become available since the conclusion of the hearing, the existence of which could not have been reasonably known of or foreseen at that time. In the case of **Ladd v Marshall** [1954] 3AER 745 the Court of Appeal held that in order to justify the reception of fresh evidence it is necessary to show that the evidence could not have been obtained with reasonable diligence for use at the original hearing; that the evidence is relevant and would probably have had an important influence on the hearing and that the evidence is apparently credible. On the basis that this is a document which the respondent chose not to disclose it is obvious that it is not new evidence and it is something which could have been disclosed and put into the Tribunal bundle if the respondent had chosen to do so. For the reasons mentioned above it is difficult to conclude that this evidence would have had an important influence on the hearing.

11. For all these reasons I consider that the reconsideration application has no reasonable prospect of success and accordingly it is refused.

Employment Judge **Little**
Date 4th December 2020

JUDGMENT SENT TO THE PARTIES ON
Date 21st December 2020