



EMPLOYMENT TRIBUNALS

Claimant: Mr Raymond Levy

Respondent: McHale Legal Limited

JUDGMENT

The respondent's application dated 22 September 2020 for further reconsideration of the liability and remedy judgments in this case is refused.

REASONS

1. Both parties' previous applications for reconsideration of the liability and remedy judgments were refused by me in a judgment dated 14 August 2020. Subsequently the respondent made a further application for reconsideration on 22 September 2020, in which it agreed with the Tribunal that there should be finality in litigation and that attempts to re-argue points addressed at a final hearing should be avoided.
2. Having set out the relevant legal principles in my the reconsideration judgment, my reasons for refusing this further application are summarised below. All matters raised in the application have been considered, whether or not specifically referred to below. For the most part, the respondent's written submissions added nothing to its previous application, nor indeed was any matter raised which had not been previously addressed at the liability and remedy hearings. No new relevant evidence has been identified and no new point of law has been referred to.
3. A number of the respondent's points reiterate its pleadings and evidence, and amount to a further attempt to have substantive findings of fact overturned. That is not the function of a reconsideration, which does not operate as an appeal mechanism. The Tribunal gave careful consideration to the evidence provided at the liability hearing, and the awards of compensation were made by reference to our detailed findings. As a matter of law, we were entitled to draw the inference of discrimination based on evidence of the primary facts established by the claimant and the respondent's explanations for its actions. We did not find the respondent's evidence reliable or satisfactory. It was inconsistent and lacked coherence, and there were differences between the contemporaneous evidence of the decision not to offer the claimant a job, and the oral evidence presented after the fact.
4. I am satisfied that the Tribunal's liability judgment correctly evaluated the written and oral evidence, and our detailed reasons in that judgment set out how we approached that exercise and how we reconciled any conflicts in the evidence.

5. The respondent's application refers to the fact that "in light of the Tribunal claim" Mr McHale made a phone call to a former employer of the claimant, and as a result would not have appointed him. This repeats a point already argued and rejected. Had the respondent conducted a fair and non-discriminatory recruitment exercise at the time, we would have expected it to contact those referees nominated by the claimant. For the purposes of the remedy judgment we had to award compensation for loss based on tortious principles, putting the claimant in the position he would have been in if the unlawful discrimination had not occurred.
6. Finally, the respondent urged me to reconsider the 2011 authority of *Commissioner of Police of the Metropolis v Shaw EAT0125/11*. It sought to compare the facts of that case with the present one, asserting that the degree of aggravation in the injury to the claimant was here less reprehensible. The Tribunal does not find that submission helpful, as awards of injury to feelings and aggravated damages are closely related to the facts of a particular case.
7. In the *Shaw* case the EAT discussed broad principles relating to awards of injury to feelings and aggravated damages, and reduced the overall awards in that case but especially the £20,000 for aggravated damages which it felt was outside the recognised range at the time. The EAT restated the longstanding principle that such awards should be compensatory and not punitive. Paragraph 22 of the judgment identifies three circumstances in which aggravated damages may be awarded, of which paragraph 22(c) is relevant to the present case. Here, our award for injury to feelings was based on the claimant's evidence of the harm caused by the decision not to offer him a job, including his hurt, anger and distress at the potential financial consequences for him. Aggravated damages were awarded by reference to the harm caused by virtue of the respondent's conduct of the proceedings. It was clear from the evidence that the claimant found the threat to report him to the Solicitors Regulation Authority particularly distressing. Firstly, it was unwarranted and founded on the erroneous belief that the claimant had misled the Tribunal at a preliminary hearing. More importantly, a report to the claimant's professional regulator could have had career-damaging consequences and even if unfounded, such a report would likely cause serious distress over a prolonged period of time.
8. I am satisfied that the Tribunal achieved the correct balance between the awards for injured feelings and aggravated damages, given the dual aspects to these awards on the facts of the case. The requirement under Rule 72(1) of the 2013 Rules for there to be a reasonable prospect of the Tribunal's decision being revoked or varied is not met. The application is therefore refused.

Employment Judge Langridge
DATE 20 October 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
29 December 2020

FOR THE TRIBUNAL OFFICE