Case No: 2415346/2018

EMPLOYMENT TRIBUNALS

Claimant: Mr A Edwards

Respondent: Lancashire County Council

JUDGMENT

The claimant's application dated **15 May 2020** for reconsideration of the judgment sent to the parties on **12 May 2020** is refused.

REASONS

1. By an email dated 15 May 2020 the claimant applied for reconsideration of the Tribunal's judgment sent to the parties on 12 May 2020 ("the Judgment"). The Tribunal panel for the case was myself, Mrs D Radcliffe and Ms B Hillon. In our Judgment we dismissed the claimant's complaints of unfair constructive dismissal and his complaints of breaches of the Equality Act 2010. Although we found that one of the incidents which the claimant complained about was an act of sex-related and age-related harassment, we also decided that the complaint to the Tribunal about that was brought out of time and that it was not just and equitable to extend the time for bringing it. The end result was that all the claimant's complaints failed.

2. An employment tribunal has a power to reconsider a judgment "where it is necessary in the interests of justice". Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the judge considers there is no reasonable prospect of the original decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the Employment Tribunal Rules 2013 ("the ET Rules")).

3. The "interests of justice" allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests of the party seeking the 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 (**Outasight VB Ltd v Brown [2015] ICR D11, EAT para 33**).

4. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All ER 745, CA** will, in most cases, encapsulate what is meant by the "interests of justice". That means that in most cases, 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.

5. The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met. (**Outasight** at paras 49-50).

6. The claimant is a litigant in person. His application for reconsideration consists of 3 pages of typed, unnumbered paragraphs headed "Reconsideration of Judgment". As we recorded at paragraph 3 of the Judgment, the claimant told us he has dyslexia. In the fifth paragraph of his application for reconsideration he says that he is a visual learner and that his paperwork is not always as well written as others. In deciding whether his application has any reasonable prospect of success I have taken into account what the claimant says about his difficulties with writing well.

7. The application for reconsideration does not clearly or specifically set out why reconsideration would be in the interests of justice. The overriding objective to deal with cases justly and fairly in rule 2 of the ET Rules includes ensuring that the parties are on an equal footing (rule 2(a)).In fairness to the claimant given the issues I mention in para 6 above, I have considered whether any of the points he makes in his application would justify the Tribunal reconsidering the Judgment even if he has not specifically explained why that would be so.

8. A number of the points made in the application were made by the claimant at the Tribunal hearing and set out instances where he disagrees with the Tribunal's findings or conclusions. Where relevant to the issues we had to decide at the hearing we made findings about them (for example, the lack of training and support he received from the respondent and, specifically, his manager (para 390 of the Judgment) and the way his suggested comparator, Rachel Currie, was treated (paras 272 and 285)). More generally, the claimant says that the "balance of probability has been used against me" and that if he did not have solid evidence he would "automatically be told that I'm incorrect". It is correct that we did not always find the claimant's evidence reliable and we explained why at paragraph 62 of the Judgment. So far as these points are concerned I find that there is no reasonable prospect of the original decision being varied or revoked because of them. I can understand that the claimant may disagree with the Tribunal's findings but he does not (with three exceptions) put forward any new evidence or other reason why those findings need to be revisited in the interests of justice. I deal with the three exceptions below.

9. The claimant did attach new evidence in the form of various emails between him, Mrs Harvey and the Bursar of Weeton Primary School. That was a school for which the claimant was responsible for providing meals alongside Staining School until February 2017 because Weeton did not have its own kitchen. It is not clear from his application why the claimant says those emails mean a reconsideration of the Judgment is required in the interests of justice. The most recent dates from July 2016. That pre-dates all the incidents complained of by the claimant apart from the short staffing issue at Alleged Incident G. Having read the emails I find that they would not have had an important influence on the hearing even in relation to that incident – they do not refer to short-staffing issues and consist in the main of complaints about the claimant by the Weeton Primary School Bursar. Even if they were relevant, there seems no reason why they could not have been obtained

with reasonable diligence for use at the original Tribunal hearing. I find there is no reasonable prospect of them satisfying the **Ladd v Marshall** test.

10. Secondly, the claimant also refers in his application to "research" he carried out when not working. He refers to pictures he took showing bread deliveries being left outside 15 of the respondent's kitchen premises and raw meat being delivered in an unsafe or unhygienic way. He states that he "[hasn't] attached the pictures because I didn't think it would be relevant to do so). I have assumed in the claimant's favour that the pictures do show what he says they show. I understand the claimant to be saying that he took those pictures while still employed by the respondent but while he was off work sick. If that is correct then it seems to me that there was no reason why the claimant could not have produced them for use at the original Tribunal hearing. I also find that it is not probable that the pictures would have had an important influence on the hearing. The claimant did not argue that the bringing of disciplinary proceedings against him was an act of discrimination or harassment nor did he rely on it as a breach of contract justifying him resigning and claiming constructive dismissal. I find there is no reasonable prospect of the pictures satisfying the **Ladd v Marshall** test.

11. Finally, the claimant in his application says that the Tribunal should revisit its decision not to extend time for bringing his claim. I take that to be a reference to the "Little boys" comment which was the one incident we found to be an act of age-related and sex-related harassment. The claimant says that time should have been extended "on the basis I was not understanding the whole procedure and the stress caused it the process was inevitable". We made specific findings about the claimant's knowledge of the process for bringing a tribunal claim at 291-298 of the Judgment. The claimant has not put forward any new evidence which seems to me to require a reconsideration of those findings. When it comes to the impact of stress on the claimant, his application refers to the stress he was under during his last year with the respondent due to his caring responsibilities both in relation to his fiancée and his mother. We did not hear as much specific evidence about his mother's health as is set out in his application for reconsideration, although there seems no reason why the claimant could not have put it forward at the Tribunal hearing. Even had it been, I find that it would not "probably have had an important influence" on our finding on time limits. As we recorded at paras 363 of the Judgment, we did not accept that the claimant's sickness absence explained his delay in pursuing his claim. I do not find that the points made by the claimant about the impact of his caring responsibilities require a reconsideration of the Judgment in the interests of justice.

12. Stepping back and taking all the points made by the claimant together, I find there is no reasonable prospect of his application for reconsideration leading to the original decision in the Judgment being varied or revoked and I refuse it under rule 72(1) of the ET Rules.

Employment Judge McDonald

Date: 8 February 2021.

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JUDGMENT SENT TO THE PARTIES ON

12 February 2021

FOR THE TRIBUNAL OFFICE