# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Bryce

**Respondent:** Elite Securities (NW) Limited

# JUDGMENT

The claimant's application dated **30 November 2020** for reconsideration of the judgment sent to the parties on **30 November 2020** is refused.

# REASONS

1.By a judgment sent to the parties on 30 November 2020 , following a determination on written representations , and deliberations in Chambers on 12 October 2020, the Tribunal rejected the claimant's application for relief from sanction, following his non – compliance with an Unless Order made by Employment Judge Holmes on 10 February 2020, which was itself an order relating to previous orders of the Tribunal made on 9 September 2019, and sent to the parties on 4 October 2019.

2.By an application dated 30 November 2020, the claimant has sought a reconsideration of the Order made on 12 October 2020, and sent to the parties on 30 November 2020. The Tribunal apologises that this application was not referred to the Employment Judge until 22 January 2021. The claimant has also appealed to the EAT in the meantime.

3.The application, running to four pages, firstly sets out various pieces of caselaw, and the guidance in the Equal Treatment Bench Book therein referred to, as to how Tribunals should accommodate disabled persons in the conduct of proceedings. The claimant is disabled, his disabilities being Asperger's Syndrome and Dyslexia.

4.The claimant contends in his application that the Tribunal did not adhere to the guidance he has referred to, and has , in reaching its judgment, taken too much account of, and attached too much weight to , the fact that he is a qualified lawyer. It thereby failed to make adequate allowances for the fact that he is still a person with disabilities.

5.He goes on to say that some of "necessary elements (i.e of the matters he was ordered to particularise) could have been ordered by disclosure from the Respondent" to fill the gaps in his memory. He goes on the say how the

respondent's submissions on the application for relief, at para.20 cited failures within the amended particulars supplied. This had not been an issue, previously, and his attention had not been drawn to this, which, as a reasonable adjustment for his disabilities, it should have been.

6.He then makes reference to his need for additional time, and how the Tribunal had not considered the need for more time when new situations arose. He also considered that the Tribunal had assumed that explanations given by him for delays in compliance, such as his health, a relationship, a bereavement and other court cases were in the past, but they were ongoing.

7.The claimant then makes reference to para. 26 (it would seem) of the Tribunal's Reasons, partly quoting that paragraph, the whole of which reads:

*"With all due respect to the claimant, he has not established that his failure since September 2019 to provide the full further particulars ordered was any form of consequence of his health conditions, or anything else. At most, the Tribunal can see how he may have needed more time, but he was given more time."*

8. He contends that this suggests that the Tribunal believed that his disability stops and starts.

9.Finally, he expressed confusion as to how the Tribunal seemed to think that he had not provided the amended particulars when , as he quotes from para. 5 of the Reasons:

*"The claimant sought to comply with the Unless Order by email of 21 February 2020 to the Tribunal, and copied to the respondent, and, further, by email of 28 February 2020 to the Tribunal and copied to the respondent,* ***the claimant sent further and better particulars in purported compliance with the Unless Order"***. (the emphasis being supplied by the claimant).

10.In conclusion , the claimant contends that the Tribunal has misunderstood the facts of the case, and more importantly his disability. He cites cases in support of the proposition that fact sensitive discrimination cases should not be struck out. He ends with reference to his Article 6 and Article 8 rights.

***Discussion and ruling.***

11. The relevant provisions of the rules relating to reconsideration are as follows:

***70 Principles***

*A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*

***71 Application***

*Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*

***72 Process***

*(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*

*(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.*

12. Thus the only ground upon which reconsideration is to be granted is that it is in the interests of justice to do so. The process under rule 72(1) permits the Employment Judge to consider the application upon receipt, and decide whether it has any reasonable prospects of success. If it has, a hearing is listed, if it has not, the application is rejected at that stage.

13. The arguments advanced by the claimant in support of the application, as far as the Tribunal can glean them, are as follows:

He had in fact complied with the Unless Order

If he had not, his claim still should not have been struck out, because there were other ways of filling in any gaps

Insufficient allowance has been made for his disability

14. These arguments are, it will be appreciated, somewhat contradictory, but it is legitimate to advance them in the alternative. Alleged compliance with the Unless Order is the most logical starting point, as, if that is correct, everything else falls away.

15. Whilst the claimant contends that the Tribunal had accepted that he had complied, he overlooks the use of the word “purported” in para. 5 of the Reasons. It was clear that the claimant had attempted to comply with the Unless Orders, and had partly done so.

16. The respondent, however, contended , and the Tribunal twice accepted that he had not done so in these respects, in relation to the terms of para. 8 of the original orders:

> 8.3 *On what basis does he claim that the respondent was aware, or had constructive knowledge of, his disability?*
>
> The claimant had failed to set out who at the respondent had actual knowledge, he had merely stated "a Manager", the identity of the Manager is unknown as is the date that the claimant alleges that they had this knowledge.
>
> 8.5 *How this information relates to the alleged PCP which is said by him to be a blanket ban that does not allow previously employed members of staff to reapply for jobs in the future and what particular disadvantage this puts the him at when compared with persons who do not share his protected characteristic.*
>
> The claimant had failed to address these questions. His response stated "This is because of something arising out of his disability" or because of his insistence to wear disability aids. The claimant had failed to actually say anything that set out the basis of a valid claim for indirect discrimination.
>
> 8.6 *How the alleged ban has affected the number of shifts worked by him giving figures as shifts worked on a monthly basis from January 2017 until December 2018.*
>
> The claimant had failed to address this point stating "he will be able to show that his shift diminished".
>
> 8.7 *In respect of an allegation that the respondent failed to make reasonable adjustments what does he say the PCP was? How did this PCP put him at a substantial disadvantage in comparison with persons who are not disabled? What steps would it have been reasonable for the respondent to have taken to avoid the disadvantage?*
>
> The claimant had failed to say what the PCP was or why it put him at a substantial disadvantage. He had only addressed the reasonable adjustment part of this request in explaining what adjustments should have been made and the reasons for them. Accordingly, he had failed to set out the basis of a claim which could validly be responded to.
>
> 8.8 *If he is claiming direct discrimination what is the less favourable treatment alleged and who is the comparator?*
>
> The claimant had failed to provide details of the actual comparator stating that he will make an application for disclosure.

8.9 *With regard to protected disclosures each alleged disclosure what it tended to show for the purposes of Section 43(B) of the Employment Rights Act 1996.*

The claimant had failed to address this request. The claimant had merely stated that he made protected disclosures relating to a crime and for health and safety and for failing a legal obligations.

8.10 *To whom the disclosure was made, when it was made and what was said.*

The claimant had failed to deal with this request stating he would advise "in due course".

8.11 *In respect of each disclosure what does he say was the detriment he was subjected to any act or any deliberate failure to act by his employer done on the ground that the worker had made a protected disclosure.*

The claimant had stated that his removal from venues or moving him from shifts was the detriment. The claimant had not set out with sufficient clarity from which venues or which shifts, when these detriments took place and who from the Respondent acted in this manner.

17. Whilst the claimant suggests in this application that he had in fact complied with the Orders, the Tribunal can see no basis for such a conclusion. He had attempted to comply, but he had failed in these several, and important, respects. It is of note that in his replies the claimant did not say that he was unable to provide any of the required particulars until there had been disclosure, nor did he make any attempt at approximations, or some, if incomplete, particulars. Instead, he merely either failed to provide any particulars, or said he would do so "in due course".

18. The Tribunal therefore sees no basis for reconsidering this finding that the claimant was indeed in serious default, and had not substantially complied with the terms of the Unless Orders. That was, of course, the determination that had already been made by Employment Judge Howard, in a judgment sent to the parties on 23 March 2020.

19. In respect of the argument that these particulars could (and should) await disclosure from the respondent, the claimant has not previously said that, nor has he identified which allegations he is making that he cannot particularise until there has been disclosure. Whilst details may be hard to recall, his employment ended on 31 December 2018, and these orders were made in September 2019. In relation to the protected disclosure claims in particular , one would have expected the claimant to be able to provide some basic details of what he disclosed , when and to whom. The claimant has not suggested (and his Impact Statement and medical reports have been re-read for this application) that he has particular memory difficulties, save that he cannot recall specific dates, as many people are unable do. The respondent is not going to be able to provide upon disclosure details of his allegedly disclosures, and to whom they were made.

20. Moving on to the next grounds, which largely overlap, involves a consideration of the claimant's disability, and the relevance of his qualifications as a lawyer. The

Tribunal was well aware of his disabilities, and their effects, when making its judgment. It noted that the claimant had not linked any particular difficulties in complying with the Unless Order with any effects of his disabilities. The major adjustment that the claimant had sought had been extensions of time, and this had been afforded to him . Even if had not previously been afforded enough time, by the time that the application for relief from sanction was made, around a further 6 months had elapsed from the making of the Orders. The claimant had still, by then provided no more particulars, it having by then been pointed out to him precisely what was lacking. The claimant failed then, and continues to fail, to point to any specific problems that his conditions present to him providing the particulars that were ordered in September 2019.

21. In relation to the Tribunal's alleged attachment of too much weight to the claimant being a lawyer, the only reference to this is in para. 17 of the Tribunal's Reasons, where it is mentioned in parentheses in the context of the claimant's citation of caselaw. The Tribunal's judgment makes no other reference to it than that. It was not a factor in the Tribunal's judgment.

22. The striking thing about this application is the continued lack of any progress towards the provision of any of the outstanding particulars which were the subject of the Unless orders. As found by Employment Judge Howard, and this Tribunal, these are not minor matters, they go to the heart of the claims being made. That is particularly so in respect of the protected disclosure claims, which remain seriously unparticularised , now some 2 years since the claim form was presented .

23. Sadly, the claimant's position at the time of this application for consideration is precisely the same as it was when he sought relief from sanction in March 2020, a further 9 months or so on from the date of the Orders. Nothing has changed , and the Tribunal's remarks in paragraphs 30 and 31 of its Reasons remain valid. The claimant has still failed to provide any of the missing particulars (even some would have been a good start) , nor has he given any indication of when he might do so. Just as that continuing state of affairs doomed his application for relief from sanction to failure, so must it similarly doom this application for reconsideration of that judgment.

24. For these reasons, there is no reasonable prospect of the original decision being varied or revoked, and the application is rejected pursuant to rule 72(1).

Employment Judge **Holmes**
Date; 12 February 2021

JUDGMENT SENT TO THE PARTIES ON
15 February 2021

FOR THE TRIBUNAL OFFICE