Case No: 2413565/19

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Master**

Respondent: **Springfield Fuels Limited**

JUDGMENT

The claimant's application dated 19 January 2021 for reconsideration of the judgment sent to the parties on 6 January 2021 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in a 1 page document attached to an email dated 19 January 2021.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> **"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."**

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

> **"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. 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, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."**

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. The points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

8. There are some points made by the claimant which should be addressed specifically:-

8.1 the claimant claims to have provided documents to the respondent's solicitors which were not then included in the bundle of documents for use at the hearing. This allegation was made by the claimant on the final day, as the Tribunal was dealing with remedy. In fact, the claimant interrupted the delivery of judgment on remedy to note that there was additional information regarding searches for employment.

8.2 We decided to pause our judgment and allow the claimant to speak. The additional information provided by the claimant was that he started to apply for alternative employment in September 2018 and that there were no job applications prior to then but that there were job applications from then. This is not disputed in the remedy judgment.

8.3 The claimant's reference to a near miss report dated 26 February 2018 is new evidence and is not relevant to any of the issues determined by the Tribunal.

8.4 The claimant refers to an email from himself to Linda Salsbury that he has. The claimant could have provided this in the course of disclosure (in fact, he should have provided it in order to comply with his disclosure obligations – see Case Management Order 4 made at the Preliminary Hearing on 30 October 2019). Even had he attended the first day of the final hearing with a copy of the email he now claims to have, it is almost certain that the tribunal would have allowed the claimant to rely on it. He did not. It is too late to now raise the

existence of the email.

8.5. The claimant refers to another email which was not in the bundle but which was provided on the 6 January 2020. He does not explain the relevance of this email. It is too late to now raise the existence of the email.

Conclusion

9. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Leach

DATE 24 February 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

25 February 2021

FOR THE TRIBUNAL OFFICE