EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Mr H Snape		**Mr R Ardill R1** **Mr C FlinosR2** **Mr A Ismail R3** **[Hayvn UK Limited** **R4 – in Liquidation]**

Employment Judge Russell (sitting alone)

Reconsideration of Judgment

The First Respondent's application for a reconsideration of the Judgment of 27 November 2020 under rule 70 and 71 of the ET Rules is refused. It is not necessary in the interests of justice to reconsider the judgment. And applying rule 72 (1) there is no reasonable prospect of the original decision being varied or revoked.

Reasons

1. On 27 November I dismissed the Claimant's claims against all Respondents under ss.13, s.26 and s.39 (1) of the Equality Act 2010 but also made an award of costs against the Second and Third Respondents.

2. The First Respondent alone now seeks a reconsideration of that Judgment under Rule 70 and by implication rule 71 of the ET rules of procedure through his solicitor's submissions sent to the Tribunal on behalf of the First Respondent on 26 November. I did not see these submissions nor was even aware which of the respondents was making the application until 21 December. I did not know of the application at all until 16 December (when I saw it without the attachments as part of an email chain) as this was originally sent to the London Central ET "in box" and not to me directly. Which was a proper way to proceed by the First Respondent but as the employment tribunal offices are effectively closed at present due to the pandemic this has led to natural administrative delays and I was not initially informed of the application being made.

3. I have now seen and read the submissions on behalf of the First Respondent. Although the reconsideration application was made in time the submissions dealing with, inter alia, the merits of the case against him, were not. The First Respondent's solicitors say they were unaware of my order of 10 November giving a deadline of 16 November to make submissions. This had been ordered at the time for three reasons. First, the hearing of the evidence had finished late in the day. Secondly, the Second Respondent at the time had unilaterally decided to leave the hearing before the conclusion of the evidence. And finally, the First Respondent had not attended the hearing at all. I therefore allowed all parties to have a few days grace after the hearing to submit their submissions but with particular regard to the First and Second Respondent (to be as fair as possible to them) given that the First Respondent was not present, and the Second Respondent had chosen

to absent himself before submissions would normally have been given. I asked the Third Respondent to pass on the terms of my order and he presumably did so as the Second Respondent (also responsible for informing the First Respondent) complied.

4. The First Respondent blames the Claimant for not contacting him at an earlier stage of the proceedings at a known email address leading in part to detrimental comment made of the First Respondent (and on public record as part of my judgment following the hearing of 10 November) and criticises the Claimant for failing to respond to correspondence from the First Respondent. However, I have not seen any such correspondence where the Claimant's solicitors can be said to have had an obligation to respond and certainly this was unnecessary after the hearing had been concluded on 10 November. I find it surprising and inappropriate that the First Respondent and his advisers should seek to blame the Claimant and or his solicitors for not contacting him when it is not being suggested the Claimant knew of , or the First Respondent supplied , his address to the Claimant and when an order for substituted service had been served on the Second Respondent (obliged, as a result , to contact the First Respondent having admitted knowledge of how to do so though not informing the Tribunal of his contact details , despite requests to do so) .

5. It is also surprising and inappropriate that the First Respondent and his advisers object so strongly and so late in the day as to the joining in of the First Respondent in the first place and the Claimant not subsequently withdrawing his case against the First Respondent. Although the Claimant failed to win his claim, the allegations against the First Respondent, present at both the First and Third interviews where allegedly unacceptable and unlawful conduct took place, warranted being tested by the Employment Tribunal in a full hearing. The fact that the First Respondent was not employed by the Fourth Respondent does not definitively mean that the First Respondent acted lawfully. And I also find that when the First Respondent first contacted the Claimant seeking to be discharged as a party, he did not apply to the Tribunal for that, or any similar, order. And even though, if he had so applied, I would have expected that application to have been refused, he should have communicated with the Tribunal at that time. But in a wider context (notwithstanding the Claimant lost his case) and in the event the First Respondent's solicitors makes the SRA complaint they indicate is being considered I observe that I have at no time found that the Claimant or his solicitors or counsel have acted unprofessionally or unreasonably and nor do I do so now.

6. I can make no finding as to whether the Second Respondent discharged his obligation to inform the First Respondent of the full details of the hearing in a timely manner, but it is clear from the fact the First Respondent himself admits he knew of the proceedings by 6 October 2020 and subsequently communicated with the Tribunal before the hearing of November 10 that he was aware of the hearing before it took place and chose not to attend. Nor was a defence filed before 26 November by him (some 2 weeks after the full hearing) and in that context, it is inappropriate and unfair for the First Respondent to now blame the Claimant and his solicitors and or counsel for his predicament (as he does). As it is to threaten the Claimant's solicitors and seek wasted costs from them within the reconsideration application. The Respondents shoulder most of the blame for any uncertainty seemingly felt by the First Respondent leading in part to his reconsideration application now. As for the apology he requests from the Claimant any apology to him, if one is owed, would be more fitting from the Second and or Third Respondent for the reasons given. My findings at the full hearing include material criticism of their conduct especially the Second Respondent. Both could have successfully defended the claims made professionally and with courtesy and they chose to do neither. And, if the First Respondent is to be believed, the Second Respondent , Mr Flinos, failed to communicate

in a proper manner with the First Respondent.

7. It was not possible to find the claims against the First Respondent were "spurious" as the First Respondent now seeks as he made no appearance at the full hearing (even though he could have done). And I observe my main finding as to the First Respondent in paragraph 27 of my judgment and reasons states

"other than offering (inappropriate and principally silent) support for the Second and Third Respondent I don't find the First Respondent to blame for the way in which the Claimant was treated in his application, interview and job offer process. Where all of the wrongful acts/ omissions were allegedly done. The First Respondent has expressed ignorance of the claim and denies any material link to the Fourth Respondent's business and I accept this is the case even though he should have attended this hearing of course. "

8. In addition to a finding that he was not responsible for any unlawful conduct towards the Claimant no order for costs was made against the First Respondent (in contrast to the Second and Third Respondents where a costs order was made). Given the First Respondent did not appear at the hearing to give evidence or question the Claimant or provide a witness statement and had not filed a defence either, he may feel fortunate that what he now describes as some detrimental comments were not more critical.

9. I reviewed fully the submissions made by the Claimant and Second and Third Respondent on 16 November before I considered my judgment and promulgated this on 27 November. I took full account of the Respondents' statements then provided and the Third Respondent (then newly supplied and late) defence. In the supplied reasons for my judgment, I made a point of dealing with their argument as to jurisdiction and stated clearly that I had taken account of the Respondents' submissions. Which I did. Whilst it is correct that I did not then take account of the First Respondent's submissions this is because I had not seen them by the appointed deadline of 16 November (itself a generous concession given the hearing had concluded nearly a week before) nor had I seen them before finalising my judgment.

10. To iterate a significant point, the hearing concluded with only the Claimant and his representative and the Third Respondent present but only because the First Respondent and, by the end of the hearing, the Second Respondent had chosen to absent themselves. As a result, all parties were, as an exceptional matter, given an opportunity to make submissions on or by 16 November. As stated above. So, the First (and Second and Third) Respondent were treated fairly in this respect. But I have nevertheless reviewed the First Respondent's submissions in the context of his Rule 70/71 application and find a reconsideration of my judgement is not necessary in the interests of justice.But I also find that there is nothing in such submissions which could or would have altered, in any material way, my judgment and reasons promulgated on 27 November. I highlight the fact that

a) the First Respondent was found not to have acted unlawfully and indeed the Claimant's case against all the respondents was dismissed.
b) No order for costs was made against the First Respondent and nothing in the First Respondent's submissions changes my findings which led to an order for costs being made against the Second and Third Respondents.
c) All and any detrimental remarks as to the First Respondent's conduct which he complains about reflect the evidence given on the day and findings made as a result of that evidence.
d) The First Respondent failed to make an appearance and made a clear choice in not doing

so as opposed to, for instance, being unaware of the hearing taking place at all. If he had wished to defend his position (subject to being allowed to do so in the absence of an ET3) then he could have done so on the day.

e) All submissions made in time were considered and a judgment given before the First Respondent's late submissions were filed. But in any event, there is nothing in these late submissions which provides me with any material new information and or persuasive reasons why a revocation or variation might be appropriate.

11. For all the reasons explained above the application for reconsideration is refused but for completeness any application for a further Preliminary Hearing (mentioned in the post hearing correspondence from the Second Respondent albeit referring to the Claimant) is misconceived. The judgment made was final and the reasons for it were sent out to the parties. Given the fact the First Respondent's application for a reconsideration has been refused that ends the matter subject to any possible appeal should any of the parties wish to pursue one.

EMPLOYMENT JUDGE

22 December 2020
Order sent to the parties on

.12/1/21.

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for Office of the Tribunals