Case No: 2416809/19

EMPLOYMENT TRIBUNALS

Claimant: Mr S Wiswell

Respondents: (1) Greater Manchester Fire and Rescue Service

(2) Tony Hunter

JUDGMENT

The claimant's application dated 1 February 2021 for reconsideration of the judgment sent to the parties on 15 January 2021 is refused.

REASONS

1. Rule 71 of the Employment Tribunal Rules of Procedure 2013 requires an application for reconsideration to be presented within 14 days of the date on which the written record was sent to the parties. The claimant has not complied with this time limit and has not set out why a reconsideration of the original decision is necessary, even though his application was made after the expiry of this time limit. Even so, I have decided to consider the claimant's application as noted below.

2. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in a 4 page document attached to an email dated 1 February 2021. References in square brackets.

The Law

3. 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).

4. 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.

5. 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."**

6. 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."**

7. 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

8. Most of the 21 of the points raised by the claimant in his application 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.

9. That broad principle disposes of almost all the points made by the claimant. However, there are some points he makes which should be addressed specifically which I do below.

10. At paragraph 5 of the claimant's application, the claimant claims that I told him that the Tribunal was "not interested" if the second respondent belittled and humiliated the claimant. My response is as follows:

(1) It was made clear to the claimant that we were required to decide on complaints of discrimination under the Equality Act 2010 which had been identified and set out.

(2) It was apparent (and both parties agreed) that there had been ongoing disputes between them over many years.

(3) The parties were informed that the Tribunal hearing was not a forum for the claimant to air all of his disputes. The Tribunal's focus was on the complaints of discrimination.

(4) The complaints did not include a complaint of unfair dismissal. It was not for the Tribunal to make findings on the fairness of the termination of the claimant's employment including the process leading to it.

(5) The Tribunal did not "become annoyed" with the claimant as he claims. However in order to ensure fairness to the claimant (who was unrepresented) and to ensure that the case was dealt with proportionately, the issues that we needed to reach decisions on (and those we did not) were made clear to the parties.

11. As for the meeting referred to at paragraph 5 (the meeting of 31 August 2012) the claimant was not somehow prevented from providing evidence or testing the respondents' evidence in relation to this meeting. I note:

(1) The claimant provided evidence about this meeting (see witness statement and documentation provided at page 224 of the bundle).

(2) The second respondent also provided evidence about this meeting (see witness statement at paras 28 to 34).

(3) The second respondent attended the hearing in person on day 2 to give evidence and the claimant cross examined the second respondent which included questions about this meeting.

(4) Notes of the meeting were included in the bundle.

12. We understood the claimant might have alleged that the second respondent's alleged poor treatment of him at the meeting of 31 August 2012 may have been an indicator of discrimination and not just about whether a fair and appropriate process had been followed. We made findings of fact accordingly and based on the evidence we had.

13. At Paragraph 6 of the claimant's application, the claimant notes that the second respondent had stated that the claimant was not fit to be a fire fighter. The claimant is a serving fire fighter and he notes clearly (and in capital letters) that he is fit to be a fire fighter.

14. To be clear, the second respondent was asked (by the Tribunal) whether he concluded in 2012 that the claimant was not fit to serve as a fire fighter. The second respondent stated that he did. The second respondent was not asked about his views on the claimant in 2021. Such a question would not have been relevant to the issues that the Tribunal needed to consider and reach findings on.

Conclusion

15. 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 8 March 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

16 March 2021

FOR THE TRIBUNAL OFFICE