EMPLOYMENT TRIBUNALS

Claimant: Mr D Robak

Respondent: GI Group Recruitment Limited

JUDGMENT
ON A RECONSIDERATION

The Claimant's application for a reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. At a hearing on 2 February 2021, I dismissed the Claimant's claim of unfair dismissal and gave oral reasons for my decision at the hearing. The judgment was dated 4 February 2021 ("the judgment") and sent to the parties on 8 February 2021.

2. On 22 February 2021, the Claimant made an application for both written reasons and a reconsideration of the judgment.

3. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") provide as follows:

   Principles

   70. *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.*

   Application

   71. *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.
Process

72.—*(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……..*

4. Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome. It is not sufficient for the Claimant to apply for a reconsideration simply because they disagree with the decision.

5. If a matter has been ventilated and properly argued during the course of the hearing, then any error or law falls to be corrected on appeal and not by way of review – **Trimble v Supertravel Ltd [1982] ICR 440**.

The application

6. The Claimant has asked me to reconsider the judgment because it would be in the interests of justice to do so. He says that I failed to make findings on the relevant evidence and '*applied the wrong test*': Specifically, he says:

    - *"The Tribunal did not award compensation for the lack of sick note benefit, his claim to pay the outstanding sick note is perfectly justified.*

    - *The Tribunal failed to make findings of fact on the relevant evidence.*

    - *The Tribunal, as I understand it, based its judgment on evidence i.e. the e-mail message of August 22, 20 in which the claimant's wife wrote on his behalf a request for a P45.*

    - *During the hearing, the Tribunal did not give the claimant the opportunity to hear its own witness in order to provide information that was important for the tribunal's judgment thereby violating his right of this self-defence.*

    - *The Tribunal ignored the fact that the claimant's wife does not speak English fluently, and that this e-mail could be written with an error because it is not consistent with all the statements of both the claimant's and witness".*

7. Thereafter, the Claimant challenges my findings of fact and poses questions that

should properly have been addressed by him at the hearing – in essence he seeks to re-argue matters. He also says that on re-analysing the events, he now concludes that he feels discriminated against. However, the Claimant did not advance a claim of discrimination, nor did he make an application to amend to include one at any stage in the proceedings.

Considerations

8. At the hearing, the Claimant presented a witness statement, as did his wife, Mrs Robak. The Claimant is Polish and had the assistance of an interpreter. Mrs Robak declined her assistance as she is proficient in English. She has also translated for the Claimant in these proceedings.

9. The Claimant complains that I did not make an award for non-payment of sick pay. At no stage in the proceedings has this formed a part of the Claimant's claim, so I did not make an award in this regard.

10. The Claimant asserts that I failed to make findings of fact on the relevant evidence. I had before me a bundle of documents produced by the Respondent. The Claimant had failed to disclose any relevant documents in accordance with the Tribunal's orders but attached e-mails and payslips to his witness statement which I considered.

11. I am satisfied that I had all the relevant material before me and both parties had opportunity to address it. Thereafter, I made my findings. Accordingly, my conclusions were based on the relevant evidence as presented by the parties. The Claimant does not assert that new evidence has come to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

12. The Claimant challenges my finding that an e-mail drafted by his wife on his behalf requesting his P45 amounted to a resignation. He says that I ignored the fact that his wife does not speak English fluently and that the e-mail could have been written with an error.

13. The e-mail was critical to the issue I had to decide, and I gave serious consideration to what was written, the surrounding circumstances and the parties' evidence on it. The Claimant and his wife both gave evidence that when it was sent, the Claimant had already been dismissed and I took this into account. However, I made findings of fact that the Claimant was not dismissed and that the e-mail was in fact a resignation. He now challenges those facts because he disagrees with them.

Conclusion

14. I am satisfied that both the Claimant and his wife had the opportunity to give evidence and make submissions on all matters he now raises. The Claimant's application is an attempt to re-hear the issues because he disagrees with my decision, which is not a valid ground for a reconsideration.

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 and it is not in the interests of justice to reconsider it. The application for a reconsideration is, therefore, refused.

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Employment Judge Victoria Butler

Date: 26 March 2021

JUDGMENT SENT TO THE PARTIES ON

29 March 2021

FOR THE TRIBUNAL OFFICE