EMPLOYMENT TRIBUNALS

Claimant: Mr Edwin Usiade

Respondent: Royal Borough of Greenwich

Heard at: London South **On: 26 February 2021**

Before: Employment Judge Khalil (sitting with members)
Mrs Beeston
Mrs MacDonald

Appearances

For the claimant: Ms Millin, Counsel
For the respondent: Mr Isaacs, Counsel

JUDGMENT ON RECONSIDERATION UNDER RULE 70 WITH REASONS

Unanimous Decision

The unanimous decision of the Tribunal is that the claimant's application dated 14 August 2020 for Reconsideration of the Judgment sent to the parties on 31 July 2020 is not well founded and is dismissed.

Reasons

1. This was an application to reconsider the Judgment sent to the parties on 31st of July 2020 under Rule 70, Schedule 1, of the Employment Tribunals Regulations 2013.

2. The claimant appeared by Ms Lesley Millin, Counsel. The respondent appeared by Mr Isaacs, Counsel.

3. The claimant's application was dated 14th of August 2020 and the respondent's reply was sent on 25th of August 2020. The Tribunal listed the reconsideration application to be determined by a hearing which took place today by CVP.

4. The parties also provided oral submissions in relation to the application and in the case of the claimant Miss Millin also produced a short skeleton argument.

5. The applicable law is set out in rule 70 of the Employment Tribunals Regulations 2013. There is only one ground for reconsideration which is where it is necessary in the interests of justice to do so. The necessity of reconsidering in the interests of justice has to be seen from both sides. This inherently involves consideration of the importance of the finality of litigation too.

6. During its deliberations, the Tribunal concluded that the claimant's application fell under three areas.

    - First, in relation to the Tribunal's approach to the list of issues and the consequential application to amend.

    - Second and intertwined with the two issues which were not permitted forward, the non-consideration of those as race discrimination and thus the absence of any findings or conclusions.

    - Third, a set of broad assertions in relation to the claimant's disability discrimination complaints both in relation to reasonable adjustments and discrimination arising from disability.

7. Dealing first with the list of issues, the Tribunal noted that the two issues which appeared in the list of issues on day one of the hearing in relation to Glenis Doble and Jessica Brennan in January and February 2018, were not part of the claimants pleaded claim.

8. The Tribunal concluded that a list of issues, even if agreed between the parties, cannot have primacy over claims not pleaded.

9. In the case management order which preceded the hearing, Judge Balogun had cautioned the claimant, that the permission to provide further particulars of his claim was in relation to matters already contained in the claim form and should not introduce new allegations (page 81 of the hearing bundle).

10. In response to the further and better particulars provided, the respondent submitted an amended response which stated as follows (page 66 of the hearing bundle)

    "It is also the respondent's position that the claimant is seeking to introduce fresh allegations to his claim as none of the allegations pertaining to covering some of the work of Glenis Doble and Jessica Brennan in January 2018 February 2018 is cited in his original claim. These allegations should not therefore be accepted as part of the claimant's claims."

11. There was no application to amend from the claimant until day one of the Hearing.

12. The Tribunal recognised that the claimant may have reasonably believed that an agreed list of issues between the parties meant that his non-pleaded claims were before the Tribunal.

13. However, the Tribunal's conclusion on this aspect of the application is that notwithstanding, it was right and proper for the Tribunal to deal with the respondent's assertion at the beginning of the Hearing that the list of issues were in fact not agreed.

14. The Tribunal provided the parties with a lot of time to agree the list of issues and adjourned the hearing until 2.00pm. When the parties returned and announced that the list was not agreed, the claimant was given further time before dealing with the application to amend. This did not take place until 2:45 PM. To assist the claimant further, the Tribunal reversed the order and invited the respondent's counsel to deal with the application first so that the claimant would know the factors the Tribunal would take into account under the ***Selkent Bus*** principles.

15. The claimant could have asked for more time but he did not. The Tribunal concluded that day at 3:50 PM and it was highly probable that if an application for more time had been made by the claimant that it would have been granted. A discussion about reasonable adjustments was already transparent and out in the open. In fact, it was one of the first matters raised by the Tribunal namely what further support the claimant may require.

16. In pursuance of these considerations, the Tribunal rejects that it is necessary in the interests of justice to reconsider its approach to the list of issues.

17. In relation to the actual determination of the application to amend, to the extent that the claimant asserts that the Tribunal reached a perverse conclusion or erred in law, that is not, in the Tribunal's conclusion a matter for reconsideration but a matter to be raised as an appeal. The Tribunal will comment however in passing that the criticism of the non-provision of oral testimony from Helen Marsh would have to be assessed based on the respondents understanding of what they considered to be the pleaded claims which had been made clear from the amended response.

18. In relation to the race discrimination complaints which were not permitted forward in consequence of the two issues which were the subject of the unsuccessful application to amend, it followed that the Tribunal would not make findings or reach conclusions on them.

19. In addition, under the race discrimination section of the claimant's skeleton argument (v), in relation to paragraph 110 of the Tribunal's judgement, what was missing from the claimant's analysis was that there was no evidence before the Tribunal about what was the more favourable treatment afforded to Glenis Doble which would have required the Tribunal to enquire into the reason why - analysed through the burden of proof lens. There was no prima facie case or facts from which the Tribunal could conclude an act of discrimination. This was an allegation where the claimant had named his comparator.

20. In relation to the remainder of the claimant's application, the Tribunal concluded that these were disagreements with the Tribunal's findings or conclusions which were not apt for reconsideration under rule 70.

21. The Tribunal also felt it appropriate to consider, holistically, the assertions made in relation to the particular disadvantage to the claimant as a litigant in person with dyslexia and whether, having regard to the overriding objective, there was any basis upon which any part of the judgement ought to be reconsidered because of the impact of any inequality in the claimant's ability to present his case. The Tribunal noted that one of the first measures it took in these proceedings was to ask the claimant what support he would need as a result of his dyslexia and there followed an open discussion in this regard which was recorded in the judgement. It is not appropriate for a Tribunal to make assumptions, generalisations or universal sweeping statements in relation to a party's presenting disability as this will always be a matter of degree and it can be disrespectful to make any assumptions. The parties also addressed the Tribunal today about the respective relevance or irrelevance of the claimant's background employment law knowledge. The Tribunal noted that the claimant's CV did set out several examples of the claimant's HR and employment law knowledge up to and including Employment Tribunals which was mentioned twice. The claimant had also attended and delivered employment law training. The Tribunal considered the relevance of this to be somewhere in between the parties respective positions. The claimant's particular background had some relevance on his ability to present his case as a litigant in person. The specific observation made in Miss Millin's skeleton under other issues (viii), was in relation to the claimant's need for more time to process information. This was specifically addressed and provided. Beyond that, this was a broad assertion about inequality that could be applied in every case involving a litigant in person and in every case involving a litigant in person with a disability who was litigating against a represented party. There was no mention of what the Tribunal could or should have done that it did not do. It was also the case that the claimant was given latitude to deal with submissions and in fact this was extended until 26 June 2020 beyond the original compliance date for replies to submissions which was 1 May 2020.

22. Having regard to all the information put before the Tribunal today, the application for reconsideration is rejected and the original judgement is confirmed.

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Employment Judge Khalil

22 April 2021