EMPLOYMENT TRIBUNALS

Claimant: Mr Abdul Sattar **Respondent: Wembley Central Masjid**

Heard at: Watford **On:** **14 May 2021**

Before: Employment Judge S Bedeau

Representation:
Claimant: **Mr S Saeed, Solicitor-Advocate, Written representations**
Respondent: **No response**

RECONSIDERATION JUDGMENT

The claimant's application for a reconsideration of the Reserved Judgment sent to the parties on 19 March 2021, is refused.

REASONS

1. On 1 April 2021, the claimant applied for a reconsideration of the Reserved Judgment sent to the parties on 19 March 2021 on the basis that it is in the interests of justice to do so.

2. The claimant was employed by the respondent as an Imam and was dismissed for gross misconduct. After a lengthy hearing, I concluded that his unfair dismissal claim was not well-founded.

3. The application for a reconsideration is based on the following:-

    3.1 the judgment of the Court of Appeal, "CA", in the case of an application for injunctive relief and summary judgment brought by several Management Committee members and Trustees of the Masjid, against the claimant and others preventing them from entering the mosque; as the claimants in the injunctive relief application were going to decide on his disciplinary appeal, it is evidence that they wanted to "get rid" of him;

3.2 that before the High Court two witnesses for the respondent gave apparently inconsistent evidence when compared with their evidence before the Tribunal, in relation to handing the letter of dismissal to the claimant which raises the issue of their credibility;

3.3 that in the CA's judgment it states that the claimant raised the issue that the Management Committee were followers of Tablighi Jamaat which goes contrary to the Tribunal's finding in paragraph 128 of its judgment;

3.4 the respondent had not identified any breaches of the claimant's 2011 contract of employment; and

3.5 that the respondent's constitution provides for arbitration where there is an apparent conflict between the claimant's contract of employment and a relevant provision in the constitution.

4. In relation to sub-paragraphs 3.1 to 3.3 above, I refer to paragraph 15 in CA judgment which Lord Justice Nugee states:

> "There is a lengthy background to the proceedings. The account that follows is largely taken from the defendants' version of events; we have not seen all of the evidence that was before the Judge and he did not need to, and did not, reach any conclusions on any of this, and I should make it clear therefore that none of these matters have been established, and many of them may be disputed."

5. It follows from this that there were no findings of fact made by the High Court Judge hearing the application and by the CA. Reference, in paragraph 17 of the CA judgment to Tablighi Jamaat is to the assertion made by the claimant, Mr Abdul Sattar, that "the 2014 Management Committee however consisted of followers of a particular group called Tablighi Jamaat which did not embrace diversity and sought to shape the Masjid in their own image.", is no more than a repeat of what the claimant was asserting before the High Court. It is not a finding of fact and I have not been shown a copy of the High Court judgment. I, however, heard all the evidence presented to me by the parties and made findings of fact. I found that most of the members of the Management Committee, were not members of Tablighi Jamaat, paragraph 127 of the Tribunal's judgment. The allegation that Management Committee members were followers of Tablighi Jamaat, was raised for the first time during the Tribunal hearing.

6. In relation to sub-paragraph 3.2, I was not made aware of the alleged inconsistency in the evidence. Findings of fact were made based on the evidence presented to the Tribunal.

7. As regards subparagraph 3.4, I went through, chronologically, the events leading up to the claimant's dismissal and the outcome of his appeal. I considered the allegations he faced, the evidence in support, and the claimant's responses. I made findings of fact and applied the relevant law to those findings in my conclusions.

8. Sub-paragraph 3.5 is a reference to arbitration where there is an apparent conflict between the claimant's contract of employment and the relevant provision in the constitution. Neither party sought to stay proceedings or to postpone the final hearing in order that that a reference be made to arbitration. The parties proceeded on the basis that the tribunal could hear and determine the claimant's unfair dismissal claim.

9. What does concern me is the fact that there were ongoing proceedings in the High Court and Court of Appeal, but the claimant did not apply for the Tribunal hearing be stayed pending the outcome of those proceedings if it was felt that they may impact on his case before the Tribunal. Instead, he sought to rely on the CA judgment in support of his reconsideration application.

10. In the Employment Appeal Tribunal, His Honour Judge McMullen QC, in the case of Mindimaxnox LLP v Gover and Ho UKEAT/0225/10/DA, a case in which the Employment Judge decided not to stay employment proceedings and to allow them to run concurrently with similar High Court proceedings, the judgment was overturned on appeal.

11. In paragraph 45 HHJ McMullen stated:

> "45. In my judgment it is not in accordance with the overriding objective to have concurrent proceedings over exactly the same factual territory except for the unique tort of unfair dismissal in the employment tribunal. The factual territory and the legal principles relating to the dismissal, but not the unfairness of it, are the same or at least substantially the same. It cannot be right that there are two sets of proceedings on foot, each requiring teams of lawyers to be respectively in the London Central Employment Tribunal and in the Queen's Bench Division on different days. Take this very case. In the employment tribunal there is to be a case management discussion then a PHR on one of the issues, if not more, and then in the High Court there is a PHR on the confidentiality issue and then a trial. It cannot be in accordance with the overriding objective that duplicate proceedings are on foot."

12. I cannot say whether the issues were either the same or similar in both jurisdictions, but as the claimant has referred to CA judgment in support of his reconsideration application, in my view, he should have applied to stay the Tribunal hearing pending the outcome of the High Court and/or the CA hearings.

13. Under rule 71 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended, "ET Rules of Procedure", a party can make an application for reconsideration within 14 days of the date on which the original decision was sent or within 14 days from the date that the written reasons were sent, if later.

14. Rule 72(1) provides:

> "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."

15. Under rule 72, ET Rules of Procedure, and having regard to the matters above, I have concluded that there is no reasonable prospect of the Reserved Judgment being either varied or revoked. Accordingly, this application by the claimant for a reconsideration, is refused.

Employment Judge S Bedeau

14 May 2021

Sent to the parties on:

…..……17 May 2021…….

For the Tribunal: