



EMPLOYMENT TRIBUNALS

Claimant: Mr H Allen

Respondent: Kin and Carta Create Europe Limited

JUDGMENT

The Claimant's application dated **17 May 2021** for reconsideration of the judgment sent to the parties on **4 May 2021** is refused.

REASONS

1 There is no reasonable prospect of the original decision being varied or revoked, because none of the matters raised by the Claimant would have changed the judgment and there is no new evidence.

2 The Claimant seeks reconsideration on the basis that it is in the interests of justice to do so. He argues that there was bias present against him, a lacking of procedure as it related to late evidence submission and factual inaccuracies in the judgement.

3 The Claimant has identified each point in the judgment where he considers that the conclusions reached are not factually correct. It is the duty of the Employment Judge hearing an application for an extension of time to consider the facts as asserted by the Claimant and to evaluate them in the context of the responses given by the Claimant during questioning and the documentary evidence. I have reviewed each of the matters which the Claimant has said are factually incorrect. I am satisfied that none of the matters raised by the Claimant have any potential for the original judgement to be varied or revoked.

4 I do not intend to address each and every point which the Claimant raises as being inaccurate, but he provides no additional evidence which would change the judgement. Examples are:

(i) the Claimant argues that it was incorrect to conclude that he was active on social media or researching racism. It was my conclusion from the evidence, for example:

when the Claimant said that he had no face to face contact but might take to social media and might have responded to contact from friends “send me some books”, as well as saying he was collating resources, that he was. He also admitted in his witness statement that the Anti-Racist social media content was pushed out on several of his personal social media platforms including Twitter and LinkedIn, though he argued that he did not necessarily create said content as several people had access to his personal and professional accounts for this reason. Additionally, he referenced in his witness statement having been involved in creating the Anti-Racist Social Media club saying I did not work on creating [it] alone.

(ii) the Claimant argues that paragraph 15 is incorrect. This acknowledged that the Claimant did not get out of his flat much. The Claimant argues that he did not go out of his flat at all, other than to the grocery shop in the same building. This makes no difference to the judgement.

(iii) the Claimant also complains about the conclusion that a friend who was a social media contact told him about Universal Credit. He says that this was someone who texted him. They did not contact him through social media. I accept he is correct that he referred in his evidence to a text, and the judgment was inaccurate on that point, but this makes no difference to the conclusions and it does not lessen my conclusion that he was active on social media.

(iv) the Claimant refers to paragraph 45 of the judgment which says that he did not make a significant issue about the global pandemic. It was my evaluation of the evidence and submissions that he did not do so, but I nevertheless took it into account.

(v) the Claimant complains that the date taken for the videos being posted online is factually incorrect. He says that updating a title on LinkedIn will update retroactively. I am not able to take that matter as justification for a review as the Claimant has not provided any evidence which demonstrates when those videos were uploaded and showing that it was at a later date.

5 The Claimant disputes the reference in the judgement to the date from which time runs. One of the issues identified as potentially direct discrimination was the Respondent not providing the Claimant with a positive reference through a line manager. I was concerned to check whether the Claimant was referring to a reference not being provided at the date of his dismissal, or some later date and I specifically questioned him about this. He confirmed that the date he was talking about was the date of termination of employment. While I accept references can be given at other dates and indeed frequently are, the Claimant does not now, and has not previously, identified an event where he was not provided with a reference which occurred after the date of termination. If the Claimant is saying that there was an occasion when a reference was sought after his termination but refused, he would have to provide some information as to who applied and roughly when.

6 The Claimant says there were procedural errors and argues that the Respondent was permitted to bring forward evidence made known to him only 24 hours prior to the hearing. The Claimant was given time to read that evidence and it was material with which he was familiar. The Claimant referred to the Anti-Racist Social Club in his witness statement, which was signed on 9 April 2021 so he was well aware that was going to be an issue in the hearing. There were a few additional items. Allowing the Claimant time to review them before the evidence was a reasonable course of action. The Claimant does not say what difference it would have made, or what he would have done, if he had had a longer period of time to consider this later additional evidence.

7 The Claimant argues that he wanted to read out his witness statement but was pressured into declining that right. It has been standard practice in the employment

tribunals for a number of years to take witness statements as read. I followed the standard practice, which involves taking time to read the Claimant's witness statement carefully before asking him to verify it.

8 The Claimant also says that several instances of case law he had raised relating to the relevance of ignorance of his rights were not recited in the Judgment. It is not incumbent on me to refer to very single case cited by the parties in the judgment, The Claimant does not say which case or cases he believes I failed to consider and how it would have changed the conclusion. It is my view that I considered the case law carefully and I have explained how I applied it in the conclusion.

9 The Claimant says that there was bias in a number of ways. He refers to my reference to his intelligence, which the Respondent had argued in support of their arguments. I mentioned that before the Respondent referred to it. I cannot see there is any bias in such a comment.

10 The Claimant argues that I was biased in my assessment that there was a lack of credibility in his argument that he was not aware of his rights as a non-UK citizen. The Claimant argues that my reference to his unwillingness to identify when the online post was made was incorrect and shows bias. The Claimant takes issue with my conclusion that as regards the history of how the Anti-Racist Social Club came about and how and when the video clips were made, he was distinctly evasive. The onus is on the Claimant to convince the Tribunal that it is just and equitable to extend time. While the Claimant did supply information about significant events in America involving the tragic deaths of black individuals and also information about his efforts to pursue therapy, there was little personal information apart from an explanation of communication between the Claimant and the Respondent very shortly after his employment ended and again in September when the Respondent contacted him voluntarily. In the light of the gap about what had happened to him personally, I took the step of asking the Claimant additional questions at the outset of his evidence with a view to enabling him to adduce additional evidence in chief to fill in some of the blanks. Only after that did I permit the Respondent to cross examine him. Notwithstanding that, it was my clear conclusion that the Claimant was evasive both in answering me and the Respondent. I believe I have acted appropriately and gave the Claimant every opportunity to present his application. However, if and to the extent that the Claimant consider there has been bias, such matters are more appropriate for an appeal where a superior court can assess them.

11 The Claimant suggests that I have no basis for determining that his mental health challenges were not severe, and he had provided medical evidence. It is a necessary part of considering an application of this nature that an employment judge has to consider medical evidence and weigh it up against any other evidence, which in this case was the evidence of the Claimant's involvement in the Anti-Racist Social Club. I did so and nothing the Claimant has said indicates a basis for reconsideration.

12 The Claimant argues that there is no evidence of prejudice the Respondent would suffer if the time extension were to be granted and the prejudice to the Claimant was not fairly and equally considered. There is always prejudice to Claimant who is deprived of the chance of bringing a claim, and that was noted. Additionally, there is always prejudice to a Respondent when it is faced with defending a claim which would otherwise be out of time and again that was noted. In this case, neither were determinative.

13 The Claimant refers to transcripts of the hearing which he says will prove he was not vague. It is not usual to make a transcript of employment tribunal hearings. We do not have the equipment. My assessment was based on my notes of the evidence and submissions, as well as the Claimant's witness statement, the written submissions and the documents in the bundle as described in the Judgement.

14 The Claimant complains about my conclusion that the only matter the Claimant was potentially ignorant about by late August or early September was how to bring a claim in the court system in the UK. I noted that when the Claimant became frustrated by the Respondent's refusal to share the results of its investigation with him the Claimant was able to source legal advice very quickly. The Claimant in his application for reconsideration says, "I made it clear in the hearing that the conversation with the Respondent in September is what prompted me to take legal action, after having been made aware of that in the meeting." The Claimant complains this seems to have been glossed over. I understand is a reference to the meeting with the Respondent on 21 September 2020. I cannot locate any point in the evidence where the Claimant said that the Respondent explained to him in that meeting that he had the right to bring a claim for unfair dismissal. It is, however, clear from this comment in his application for a reconsideration that this event prompted the Claimant to bring proceedings. That does not change the conclusion I reached that there is no basis for a just and equitable extension of time; rather it confirms that nothing particular had changed at that time except that the Claimant was frustrated by the Respondent's refusal to share the results of its investigations with him.

15 Nothing the Claimant has said indicates a potential basis for changing my assessment of this application so that there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge Walker

Employment Judge N Walker

Date 25 May 2021

JUDGMENT SENT TO THE PARTIES ON

26/05/2021.

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FOR THE TRIBUNAL OFFICE