Case No: 2415138/2019

EMPLOYMENT TRIBUNALS

Claimant: Mr S McCombe

Respondent: Bollin Group Limited

JUDGMENT

The claimant's application dated 8 April 2021 for reconsideration of the judgment sent to the parties on 29 March 2021 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in a 5 page document attached to an email dated 8 April 2021.

The Law

2. 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).

3. 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.

4. 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."**

5. 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."**

6. 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

7. The majority of the points raised by the claimant 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.

8. 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.

(1) Handover of GFC Duties (para 6). The evidence of this was considered when reaching my decision. This included the clearer copy of the Handover tasks record referred to at paragraph 6 of the claimant's application. The claimant was right to note that sections of the version in the bundle were not readable and I insisted on a "clean" copy from the respondent. Initially I had understood that the unreadable parts had been redacted but it became clear that this was unintentional due to some highlighting on the document. The "clean" copy was received by the parties and me well before the conclusion of the hearing. I took account of its contents.

(2) Protected Conversation dated 2 September 2019 (para 10). As paragraph 84 of my judgment makes clear, my finding is that the position was to be retained but on a holding basis.

(3) Specific purpose of protected conversations (para 11). By the time of the final hearing it had been accepted that these discussions did not have the protection of s111A Employment Rights Act 1996 (they were not "pre termination negotiations" as defined in that section). My findings on this discussion are noted at paragraph 85 of the Judgment – that there was an intention to try to engage in a frank discussion about the claimants wishes or intentions but that this discussion did not develop.

Conclusion

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 27 May 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

28 May 2021

FOR THE TRIBUNAL OFFICE