



EMPLOYMENT TRIBUNALS

Claimant: Mr L Gonzalez
Respondent: ContractAir Ltd
Heard at: Bristol (decision on papers in Chambers)
On: 8 June 2021
Before: Employment Judge Midgley
Mrs A Sinclair
Mrs C Earwaker

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The unanimous Judgment of the Tribunal is that the claimant's application for reconsideration is refused because there is no reasonable prospect of the Reserved Judgment being varied or revoked.

REASONS

1. The Reserved Judgment of the Tribunal dated 12 May 2021 was sent to the parties on 13 May 2021. It was sent in error, as the Judgment was then in draft form. The final version of the Judgment was promulgated on 14 May 2021. The Tribunal apologises for that error but understands that the parties have since been sent the Reserved Judgment in its final form. However, for the sake of completeness, a further copy of the final version of the Reserved Judgment is attached.
2. The claimant applied for a reconsideration of the Reserved Judgment on 13 May 2021. At that time, he simply wrote, "I want to appeal this decision as it is unjust." On 17 May 2021 the claimant was directed to appeal to the Employment Appeal Tribunal. It appears that the claimant did not receive that letter which had been emailed to him and, thus, on 2 June 2021 the claimant emailed the Tribunal seeking information as to "how to appeal" the Judgment. He did not receive any response to that email as it was not referred to the Judge.
3. On 8 June 2021 the claimant spoke to Mrs F Vaz, a member of the Tribunal staff, and she explained the difference between an appeal and an application for reconsideration to him. In a second email on 8 June 2021, timed at 11:57, the claimant clarified that he wished to apply for reconsideration of the Reserved Judgment. The grounds of that application were as follows:
 - (a) The Tribunal was constituted of British white individuals who "would [not] understand racism". The hearing was therefore unjust.

- (b) The claimant is not permitted to attend a court of law without an appropriate adult due to his brain injury. Despite mentioning that fact to the Judge, the Tribunal ignored the issue, and the hearing was therefore unfair.
- (c) The claimant's solicitor reviewed the Reserved Judgment and concluded that it was either politically or racially motivated, as the claimant's evidence was "too strong for this outcome."
4. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. Although the claimant did not specify that he wished to apply for reconsideration until 8 June, which is outside the time limit, we are satisfied that it would be in the interests of justice to extend time to permit the application to be considered given that the claimant is a litigant in person, and it was not until 8 June 2021 that the distinction between reconsideration and appeal was explained to him. The claimant had acted promptly in indicating his unhappiness with the Reserved Judgment on 13 May and in clarifying that he sought a reconsideration of it on 8 June 2021.
5. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.
6. We address each of the grounds relied upon by the claimant in turn.
7. The claimant did not raise issue (a) with the Tribunal during the hearing, on the contrary he thanked the Tribunal at several stages of the hearing. At the end of the third day, whilst addressing us in response to the strike out application the claimant said words to the effect of,
- "You've been very polite and very correct and very balanced. I trust you, I've had a fair trial, and I have complete trust in the decision you make. If you decide to make the decision to strike out my case for saying what I did, and I was stupid to say what I did, if it costs me the trial I will fall on my sword. I trust you to make the decision. I will respect the decision; I am proud of myself.*
8. The claimant repeated such thanks at the end of the hearing on the final day and thanked us for our patience with him and the fair way in which we had conducted the hearing. He stated that whilst he was "not hopeful of victory, he trusted [the Tribunal] to make a fair and just decision."
9. He did not raise any concern as to the race or nationality of the Tribunal members nor of its impact on the fairness of the proceedings at any stage.
10. The claimant first raised the need for an appropriate adult (issue (b)) on the afternoon on the third day of the hearing, he had not alerted the Tribunal to such a need prior to the hearing or at any point before then. As detailed in the written reasons, the claimant stated when responding to the strike out

application that his mother had acted as an appropriate adult for him when he was interviewed under caution by the police in respect of a charge of causing grievous bodily harm, having punched another man. We therefore suggested to the claimant that it may assist him if his mother were present as an appropriate adult to support him on the fourth day as a reasonable adjustment. Unfortunately, in the event she was not available, but the claimant confirmed to us that he was content to proceed in her absence. The claimant did not object to the case continuing without an appropriate adult. The claimant was able to ask sensible questions of the witnesses, to give evidence coherently and articulately, and to make a sensible closing argument.

11. Issue (c) relies upon a view expressed after the event by a third party, who was not present during the Tribunal and did not hear the evidence. The issue does not identify any ground which could support an application for reconsideration.
12. It follows that in our judgment none of the matters raised in the email would have the effect that there would be any reasonable prospect of the original decision in the Reserved Judgment being varied or revoked.
13. In addition, in so far as the application entreats me to reconsider and review my decision generally, the Employment Appeal Tribunal (“the EAT”) in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review does not mean “that in every case where a litigant is unsuccessful, he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order”. This is not the case here. In addition, it is in the public interest that there should be finality in litigation, and the interests of justice apply to both sides.
14. Accordingly, we refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Midgley
Date: 14 June 2021

Judgment and Reasons sent to the Parties: 21 June 2021

FOR THE TRIBUNAL OFFICE