



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr F Saleem

**Respondent:** Menzies Aviation (UK) Limited

## JUDGMENT

The claimant's application set out in emails sent to the Tribunal by the claimant's representative, Mr Broomhead, on 26 January 2021 and 14 April 2021 for reconsideration of the Judgment sent to the parties on 14 April 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, as indicated above, is included in two emails sent to the Employment Tribunal by the claimant's representative, Mr Broomhead, firstly on 26 January 2021 and then secondly on 14 April 2021. References, where made in square brackets, are references to paragraph numbers from the Reasons promulgated with the Judgment which was sent to the parties on 14 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. In effect I have read and interpreted the emails of 26 January and 14 April 2021 as raising essentially the same points on behalf of the claimant through his representative, Mr Broomhead. I have interpreted the content of the emails sent by Mr Broomhead to raise the following points in support of his application that the oral judgment announced to the parties in the presence of Mr Broomhead in February 2020, subsequently confirmed in a written Judgment sent to the parties, including Mr Broomhead, on 24 April 2020, should be cancelled and set aside and a fresh Tribunal with different members and a different Employment Judge should be constituted in effect to re-hear all the claims of the claimant. That contention is supported by the following allegations and arguments which are put forward by Mr Broomhead on behalf of the claimant:

- (1) He makes complaints about the fact that at the conclusion of the oral hearing in February 2020 I did caution the parties against making a kneejerk application for written reasons there and then. The Tribunal had taken five days from Monday 10 to late in the afternoon on Friday 14 February to listen patiently and professionally to the claims of the claimant. At the conclusion of that hearing, as indicated in paragraph 14 of the full Reasons sent to the parties on 14 April 2021, I explained the care and time that the Tribunal, constituted by myself and two members, had taken to explain in detail the judgments that it had come to in connection with the claims of the claimant, and just as importantly the reasons why the Tribunal had unanimously come to those conclusions. As I have indicated in those Reasons, the Tribunal had discussed that reasoning and I had made 34 pages of handwritten notes in order to enable me to deliver an extensive oral

judgment to the parties at the conclusion of the hearing late in the afternoon on Friday 14 February. As I have indicated in paragraph 14 of the full Reasons, that oral judgment was delivered over some 45/50 minutes. It was very important to the Tribunal that the claimant, after such a long hearing, was able to leave the Tribunal knowing not only what the decisions were but equally the reasons why the Tribunal had come to those decisions, particularly in circumstances where his claims had been dismissed. Having recently reviewed those handwritten notes I remain satisfied that they provided the claimant and Mr Broomhead with a comprehensive and detailed explanation of the reasons why the claims of the claimant were dismissed. I am satisfied that both Mr Broomhead and the claimant left the Tribunal that day fully understanding the reasons for the decisions which were made by the Tribunal.

- (2) Furthermore, as Mr Broomhead has confirmed, a written Judgment was then prepared and approved by me, and that was sent to Mr Broomhead -he says-on 24 April 2020. Clearly by then the country had gone into lockdown as a result of COVID as from Monday 23 March 2020, and that accounts for the delay in the summary Judgment being sent to the parties.
- (3) I fully accept that at the conclusion of the lengthy oral explanations which were given to the claimant that I did caution the parties about submitting an immediate application for full written Reasons. It is my view that after a five day hearing, and in circumstances where a Tribunal takes great care to deliver an extended oral judgment with full Reasons, that it is almost an act of petulance for any representative to immediately ask for written Reasons. I believe that it is fair and reasonable for the Tribunal to expect any party and their representative to pause and reflect on the information which they have been given before then applying for full written Reasons. I can see how Mr Broomhead believes that that comment may have been more directed at him than towards the claimant, but that is not a criticism which I accept. I have as a Judge received many many applications for full Reasons, often after lengthy hearings, from representatives of the successful party. I am aware that such applications are sometimes made by successful respondents for use as training exercises. It should be obvious to anyone that to prepare full Reasons for a case which lasted a full five days would be a considerable undertaking for any Employment Tribunal Judge. Indeed when I prepared the full Reasons which were sent out on 14 April 2021 it took me two full extensive days in the Employment Tribunal to prepare and dictate those Reasons. I then had to review the draft which was typed before a final version could then be approved and sent to Mr Broomhead. I have reflected on the fact that the full Reasons run to some 135 paragraphs over 39 pages. That is a considerable undertaking.

- (4) Mr Broomhead suggests that having made this comment about kneejerk applications for written Reasons that this indicates bias on my part. I wholeheartedly reject any such suggestion. I do not see how in any circumstances it amounts to an indication of bias. In my opinion it indicates nothing more than what I believe is a reasonable expectation on the part of the Tribunal that before asking for full Reasons that each party will pause and take a short time to reflect on whether or not such Reasons are genuinely necessary, either to appeal or to understand the reasons why the Tribunal made the decisions that it did. I see from Mr Broomhead's email that he says that he received the Summary Reasons on Friday 24 April 2020 and that he submitted an application for full written Reasons the following Tuesday, 28 April 2020. I accept without any reservation that that short period of time does demonstrate on the part of Mr Broomhead a short period of time of reflection on both the oral judgment which I delivered in February 2020 and then on the Summary Reasons which were sent to him on Thursday 24 April. I cannot however see how the remark that I made at the conclusion of a long five day hearing in any way gives rise to any suggestion of bias. It does nothing more than reflect the lengthy period which is inevitably associated with preparing full Reasons and I believe is a reasonable expectation on the part of the Tribunal that the parties will not submit kneejerk applications for such reasons but will take time to properly pause and reflect, which indeed I acknowledge and accept Mr Broomhead can demonstrate that he did after receiving the summary Reasons.. I cannot see therefore how my comment had any effect on the willingness or otherwise of Mr Broomhead to submit an application for Written Reasons. Furthermore, I cannot see how the comment in any way affected his appreciation or understanding of my conduct of the five day hearing in February 2020. I cannot therefore accept that there was any indication of bias, and I cannot see how any independent observer could possibly come to the conclusion that the comment does give any indication of bias either. On those grounds I therefore reject the allegation of bias and I do not accept that it substantiates any application for reconsideration or in effect the cancellation of the Judgment or supports an application for a full re-hearing of the claims of the claimant which would of course necessitate a further five day hearing.

8. It is very much to be regretted that the delay in supplying full Reasons has occurred. I wish to offer my personal apologies to Mr Broomhead and to the claimant for any part that I have played in that delay. I am aware that there was a delay in me being notified of the application for full Reasons which Mr Broomhead had made, but in any event I am happy in this Judgment to say that for personal health reasons, once COVID became a very serious issue in March 2020, I effectively self-isolated until a vaccine programme was available. The Tribunal does not permit files and bundles of documents and working papers and witness statements to leave the Tribunal building and to be sent to my home address so that I could then prepare full Reasons even though I was not in a position to go to the Employment Tribunal. On that basis, for personal reasons, I was unable to

attend at the Tribunal for the two days which proved necessary to prepare the full Reasons until such time as I had received the first vaccine. Even then I was taking some medical risk until such time as I would have the second vaccine (Friday 14 May), but nevertheless I appreciated the urgency of the situation. I assessed the level of risk and indicated that I was prepared to travel to the Employment Tribunal by car but not by public transport to spend two days in preparing the full Reasons which were then sent out on 14 April 2021. I regret that I was not in a position to do that beforehand. However, that was due to a combination of my personal health and the understandable rules which do not permit the Employment Tribunal to send to my home address the files and documents which I needed in order to prepare the full Reasons.

9. I am very sorry indeed that the first email which was sent by Mr Broomhead in December was not replied to but that was not, as he appears to suggest, some deliberate act on the part of either the Employment Tribunal or by me. I could certainly have addressed the question of delay and the question of alleged bias at the time of the first email. I would not, however, have been able to prepare the full Reasons on the grounds that I have just set out above, which in the main relate to the impact of COVID and my personal health reasons. Mr Broomhead will accept that I am not prepared to give further details of those, but at all times they have been made available to my Regional Employment Judge, Mr Franey.

10. Mr Broomhead then refers on a number of occasions to procedural irregularities. The only procedural irregularity that I can identify is the obvious delay in replying to the request for full Reasons which was submitted in late April 2020. Mr Broomhead himself indicates in his application that at first he attributed the delays to the obvious impact of COVID, and in my opinion that was an obvious conclusion for him to come to. Whilst not in any way wishing to absolve myself or the Tribunal of their failures to reply promptly to the request, I do believe that it is fair and reasonable to have expected Mr Broomhead, if he was so upset about the delay, to have contacted the Tribunal for an update sooner than 11 months after he had submitted his application. I believe that it is reasonable for a professional representative to have a system of reminders which would have prompted Mr Broomhead to chase the Tribunal, say every month or perhaps in the circumstances of COVID every two months, to ask for an update and to be informed as to when it was likely that full Reasons could be provided. He accepts, it would appear to me, that no such application was made on his behalf, and that in effect he let matters lie for some 11 months before chasing it up. I think it is reasonable therefore for Mr Broomhead to have to accept some part and some responsibility for the delay which has occurred. In any event I believe that I have now openly explained the reasons for the delay.

11. I cannot see, however, that there are any grounds at all to suggest that the delay amounts to a procedural irregularity which then justifies a reconsideration of the Judgment which was given orally in February 2020 to the extent that the Judgment is completely set aside and a fresh hearing over another five days is allocated to a fresh Tribunal. I simply cannot see how that is justified or how it is fair or reasonable at all. The relevant test of course is whether it is in the interest of justice to do so. I cannot see any grounds to justify such a conclusion.

12. It must surely be obvious that against the background of the disruption caused by COVID that the delays relate to the unprecedented circumstances of the COVID outbreak as I have explained above. I cannot see how the delay will prevent the Employment Appeal Tribunal -if appropriate-from considering any appeal which may or may not be lodged and pursued by the claimant. The Judgment and thought processes of the EAT will not be affected by the delay. They will still be able to consider the original summary Judgment which was sent out in April 2020 and then consider the substantial full Reasons which were sent to the parties on 14 April 2021. I cannot see how a delay, even a delay of some 12 months, will in any way affect the ability of the EAT to consider any points of appeal which Mr Broomhead raises. I do not accept, therefore, that it is in the interests of justice for the Judgment of the Tribunal that I was part of to be reconsidered, and certainly not reconsidered to the extent that the Judgment should be set aside and a full re-hearing of the claims of the claimant should now be undertaken.

13. I believe that the fact that the full Reasons sent out on 14 April 2021 run to some 39 pages and almost 140 paragraphs demonstrates that I was able to clearly recollect the nature of the claims of the claimant, equally clearly recollect the evidence that was given and the findings of fact which were made by the Tribunal. I was able to refer to the comprehensive pages of handwritten notes which both I and my colleagues (members) had made during the course of the hearing, and I was able to reflect on the substantial pages of notes which had been made during our deliberations and which had led us to be able to deliver such a comprehensive oral Judgment to Mr Broomhead and the claimant at the conclusion of the hearing on 14 February 2020.

14. I am presuming that in his emails that Mr Broomhead has made a typographical error when he says of me that he has "lost all trust in his (lack of) bias and competence". The words "lack of" ought surely to have been deleted from the email. I have already indicated that I cannot accept that there are any grounds to conclude that I demonstrated any bias towards the claimant or to Mr Broomhead, either during the course of the proceedings or during the time which expired until the full Reasons were sent out on 14 April 2021. Furthermore, for the reasons which I have set out, I cannot see how there are grounds for questioning my competence, and obviously that of my fellow members who dealt with the claims of the claimant over the five day hearing in February 2020. If bias or lack of competence is to be alleged then clearly, in my opinion, to substantiate such allegations Mr Broomhead would have to have identified behaviour during the course of the hearing. He does not make mention or suggest any such conduct. His allegations are based simply on the delay which has occurred, which is extremely regrettable, and the comment which I made and which I have now explained in connection with applications for kneejerk full Reasons. I do not accept that either of those issues can give rise to substantiated allegations of bias or substantiated allegations of lack of competence.

## **Conclusion**

15. In summary, therefore, I do not accept that Mr Broomhead has raised any grounds at all to persuade me that it is necessary in the interests of justice to reconsider the original decision of the Tribunal announced in February 2020,

confirmed in the full Judgment and Reasons sent to the parties on 14 April 2021. I believed that having considered the two emails sent by Mr Broomhead to support such an application the appropriate conclusion of the Tribunal is that the original Judgment/decision of the Tribunal should be confirmed.

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Employment Judge Whittaker

DATE: 17<sup>th</sup> May 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
25 June 2021

FOR THE TRIBUNAL OFFICE