



EMPLOYMENT TRIBUNALS

Claimant: Mr. R Kumar
Respondent: MES Environmental Ltd

JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

UPON considering on 21 June 2021 the claimant's application for reconsideration dated 25 May 2021:

The claimant's application for reconsideration is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. I do not believe there was a procedural irregularity as alleged by the claimant. It is not unusual, particularly in the age of remote working, for documents to be provided on the morning of the hearing. As the claimant accepts, I took a break to enable myself to read his documents before starting the hearing proper. Therefore, I do not think there was any prejudice.
2. I did not spend more time considering the respondent's documents. I simply read both side's documents before starting the hearing proper. I analysed the competing arguments only after hearing submissions.
3. I may well have read the respondent's skeleton argument first as the claimant's had not been provided. I do not think this caused any unfairness or prejudice. Even if I had had everything before the hearing, I probably would have read the respondent's argument first because it would make sense to do so given it was their application. As the claimant accepts, I made sure I read his statement and skeleton before starting properly and his argument was therefore fresh in my mind before the hearing started properly.
4. The claimant did not suggest on the day that any unfairness was caused by this approach and it is unclear to me what the claimant suggests I should have done other than take a break to read his documents before starting properly, which is what I did.

5. At paragraph 16 the claimant states that it was incorrect for me to state in the reasons that he was dismissed in 2003 when he was made redundant. It is unclear to me what distinction the claimant is drawing here. My understanding is that he was dismissed and the respondent relied on redundancy as the reason for dismissal. The claimant also points out that he claimed the redundancy was unfair. My understanding is that this would have been the basis of his unfair dismissal claim which I expressly referred to at paragraph 16 of the reasons. In any event these are matters of background only – the claimant’s dismissal was some 17 years prior to the events I was considering – and they do not affect the rationale behind my decision.
6. The claimant goes on to identify that I did not mention in the reasons that he was successful in a race discrimination claim against the respondent in 2007. This is correct; the reasons only say that the claimant has brought various employment tribunal claims and gives examples of the types of claims brought (including race discrimination). I did not give any details of those claims or the outcomes. Other than what the claimant said about it in his witness statement I do not believe there was any evidence about the race discrimination claim. This claim was a long time – about 13 years - before the issue I was concerned with. I therefore believe it again to be a matter of background which does not go to the rationale of my decision.
7. The claimant now seems to rely on his successful claim in 2007 and what he describes as a worsening of a pre existing health condition to make it objectively reasonable that he suffered mental distress when he received the 6 May letter. I do not believe this is how the claimant put his case at the hearing. I do not believe that the claimant provided any medical evidence which might have substantiated this assertion. It is difficult to see how much was meant by paragraph 15 of his skeleton argument. In any event however I took the claimant’s case at its highest at the hearing and accepted that he did suffer mental distress and this had an adverse effect on his health. I do not therefore see what could be gained, from the claimant’s point of view, of considering the whole circumstances of his medical history.
8. The overall conclusion that there is no reasonable prospect of the Tribunal finding it was objectively reasonable for the respondent’s letter to have caused mental distress is in my judgment not affected by any of the points which the claimant makes and I still consider that conclusion is right for the reasons I have given.
9. Finally, I observe that none of the points made by the claimant concern my analysis of the first strand of the respondent’s argument which would have led to the claim being struck out even if the respondent had not succeeded on the second strand.

Employment Judge Meichen

21 June 2021