



EMPLOYMENT TRIBUNALS

Claimant: Mr D South

Respondent: Danbro Employment Umbrella Ltd

RECONSIDERATION DECISION

The claimant's application dated 15 April 2021 for reconsideration of my Judgment dated 7 April 2021 is refused.

REASONS

The reconsideration applications

1. I have undertaken a preliminary consideration of the claimant's application for reconsideration of the liability judgment.

The law

2. An application for reconsideration is an exception to the general principle that (subject to an 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. Under Rule 72(1) I may refuse an 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 where it was said:

"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 Employment Appeal Tribunal said:

"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or 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."

Decision

6. The reasons for my decision are as follows.
7. The Respondent confirmed in an email dated 13 July 2020 that *"The Respondent's written statement remains that which was provided on the ET3. The Respondent does not have Witness Statements to submit."* They also referred to re-doing the bundle to include some documents provided by the Claimant to the Tribunal. As the Claimant says, the Respondent did not provide written witness statements or written submissions but relied upon their ET3 response form. What they had provided was therefore taken into account together with what was in the joint bundle, and the Claimant's statement and written submissions. There was nothing improper in that. The Claimant in any event had to establish his case.
8. The Claimant in the majority of his submissions disputes whether evidence was relevant, how evidence has been evaluated and/or applied, and the application of the law to the issues in the case. The Claimant at times also puts forward new information or evidence. These are not matters suitable for a reconsideration application.
9. The Claimant refers to the case of Robinson Steele v RD Retail Services [2006] IRLR 386. That decision was taken into account, together with other key case law in the field.

10. In summary, I am satisfied on the basis of what is before me that there is no reasonable prospect of my original decision being varied or revoked. The application for reconsideration is therefore refused.

Employment Judge Harfield
Dated: 13 July 2021

JUDGMENT SENT TO THE PARTIES ON 15 July 2021

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS