



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

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Case Nos: 4114755/2019 & 4107034/2020

Written Submissions

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Employment Judge: M A Macleod

Mr G Timothy

Claimant  
In Person

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Dell Corporation Ltd

Respondent  
Represented by  
Ms D Reynolds  
Solicitor

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Employment Tribunal is that the claimant's application for reconsideration of the Tribunal's Judgment of 15 March 2021 is refused.

### **REASONS**

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1. In this case, the Tribunal issued a Judgment dated 15 March 2021 in which the claimant's application to amend his claim dated 25 January and 16 February 2021 was refused.
2. The claimant submitted an application for reconsideration of that Judgment on 29 March 2021, and in turn, the respondent opposed this application.

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3. Following correspondence, it was agreed that the application should be dealt with by way of written submissions alone. The claimant's application and the respondent's opposition were therefore supplemented by submissions from the parties in respect of their respective positions.

5 4. The Tribunal therefore requires to consider the terms of the application and the submissions made by the claimant; the terms of the respondent's opposition and the submissions presented on their behalf; and then determine the application based on the Employment Tribunal Rules of Procedure 2013 and any relevant authorities.

10 **Claimant's Application**

15 5. The claimant opened his application by confirming that he considered that the Judgment set out reasons which were clear, logical and made sense to him, but that there were elements of the decision which concerned him. He confirmed that he was only asking for reconsideration of part of the original amendment.

6. The original application for amendment sat under four headings, the first two of which the claimant categorised as victimisation, but which the claimant wanted to add to indirect discrimination, duty to make reasonable adjustments and discrimination arising from disability.

20 7. Having reflected on matters, the claimant confirmed then that he had come to the conclusion that it may be unfair to pursue claims of failing to make reasonable adjustments and discrimination arising from disability, and he wished to withdraw those claims. That left indirect discrimination, which he said he wanted the Tribunal to reconsider.

25 8. He observed that the case is a complex one not because of the pleadings but due to the format in which they have been presented to the Tribunal. He set out the history of the manner in which the format had come about, and suggested that it was unclear whether I had reviewed and considered the format of the consolidated pleadings when making my decision, and

respectfully suggested that the consolidated pleadings were now clear, which is relevant to the request to reconsider the decision.

- 5 9. He criticised the respondent's consolidated pleadings as not conforming to the instructions set out by Employment Judge Porter, in that a verbose narrative form remains, which the Tribunal may find difficult to follow. He asked the Tribunal to consider that he could only influence how he presented information to it.
- 10 10. The claimant pointed to the observation in the Judgment at paragraph 70 – and it is a Judgment, not “notes” as the claimant referred to it – that the claimant had failed to set out a proper basis upon which the claims had been specified. He said that “This of course is true and entirely my fault.” In his defence, he said that he was only seeking to use the same template for amendment as he had before, and had mistakenly assumed that Employment Judge Porter would be dealing with the case as before, and would therefore have a detailed knowledge of the case. That being said, he continued, my comments “make perfect sense”.
- 15 11. Under the heading “Request to Reconsider Indirect Discrimination”, the claimant made reference to paragraph 49 of the Judgment, in which it is recorded that the respondent said that he was legally represented in November 2020. He said that this was not true, but that it may go some way to explaining the “refining of pleadings” I referred to in paragraph 61. The claimant agrees that there must be finality in litigation, being aware of how frustrating it must be for legal professionals to deal with lay persons. He sought to assure the Tribunal that there would be no further requests for amendment.
- 20 25 12. The claimant then said he would address “the information required by Judge Macleod” in the same format as his consolidated pleadings outlined by Employment Judge Porter on 18 January 2021.
- 30 13. The claimant identified two events under the heading of Indirect Discrimination, and it is useful to set them out here:

1. 23 May 2019 to 31 August 2020 – Failure to properly investigate a complaint made to the Ethics Committee on 23 May 2019 raising a formal grievance about Mr Galpin’s management of the claimant, bullying, the mental health of colleagues, breach of the Ethics Policy, his own mental health and his fear of becoming a suicide victim. He identified the relevant PCP as Grievance Practices – not abiding by the Ethics Policy and Anti Mental Health Discrimination initiatives/policy, which exacerbated his mental health condition, a PCP he said was applied to all employees. He identified the disadvantage of the PCP to the group to which he belonged as including damage to his health, exacerbation to his mental health condition, inability to perform duties or return to work within a reasonable period and financial loss, disadvantages which all applied to him.  
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2. 6 March to 31 August 2020 – Upper management’s failure to investigate properly the complaint about the Ethics Committee’s failure to investigate the original complaint properly. The relevant PCP was Grievance Practices – not abiding by the Ethics Policy and Anti Mental Health Discrimination initiatives/policy, which exacerbated his mental health condition. He repeated that this PCP was applied to all employees and identified the same disadvantages as above, which applied to him.  
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14. The claimant therefore requested that the Tribunal reconsider its decision on indirect discrimination only. He said that this should not be overly burdensome for the respondent.
15. He suggested that his proposed amendment was now clear, as were his consolidated pleadings, and that the amendment falls into the category of being so closely related to the claim already that it should be allowed.  
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16. The claimant then set out what he described as difficulties with the claim, which are best summarised as difficulties which he has encountered in understanding employment law as a lay person. He also advised that he continues to suffer from mental health problems. The most difficult area  
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was trying to understand what information is required, and how it should be presented. He referred to **C v D UKEAT/0132/19/RN** as being similar to this case. He believes that his consolidated pleadings must now be close to being acceptable to the Tribunal. As a result, he did not see how adding the claim of indirect discrimination would be burdensome at all.

### **Respondent's Opposition**

17. By email dated 9 April 2021, the respondent submitted objections to the claimant's application for reconsideration.
18. Ms Reynolds, the respondent's solicitor, submitted that it was not in the interests of justice to revoke the original decision. It would be contrary to the public interest requirement that there should be finality in litigation, where possible. She pointed out that the Judgment refused the claimant's application to add claims of indirect discrimination and other heads because, after careful consideration of the relevant law, it failed to set out a proper basis upon which the claims had been specified to allow the Tribunal to consider them, or to give fair notice to the respondent of the basis of the claims. She argued that the claimant was now attempting to make a further application to amend his ET1, to add a claim of indirect discrimination only, by means of a reconsideration application, which is neither the purpose nor permitted.
19. She went on to argue that the information which sets out the basis for the further specification of the amendment contained in the reconsideration application was already known to the claimant when he submitted his original application to amend.
20. In addition, Employment Judge Porter made clear to the claimant, in the context of the consolidated pleadings, that he should set out the essential matters when making his application to amend, but, submitted Ms Reynolds, he failed to do so.

21. Ms Reynolds submitted, with respect, that the claimant did not argue that his mental health had prevented him from understanding or doing what was required of him in presenting the essential matters of his claim.

5 22. Finally, she argued that it would be prejudicial to the respondent if the original decision were varied or revoked on the grounds that the parties are at a late stage in the proceedings and the respondent has spent a considerable amount of time and expense on responding to the claimant's numerous applications. This would be likely to have an impact on the listing of the case for a hearing on the merits.

### 10 **The Claimant's Further Submission**

23. The claimant presented additional submissions, having read the respondent's objections to his application.

24. He disputed strongly that he was making a new application to amend his claim, and there is no attempt to add a claim.

15 25. He distinguished between knowing something as a fact and understanding its relevance as two entirely separate matters.

20 26. He disputed the suggestion that additional unreasonable expense would be incurred by the respondent if there is no real prejudice to them and the amendment can be successfully defended at a final hearing. He repeated his contention that the application has been familiar to the respondent for some time, that it will not extend the hearing nor require the amendment of witness statements or other documents, and therefore that no prejudice accrues to the respondent as a result of its being granted.

### **Discussion and Decision**

25 27. The Tribunal must consider whether or not it is in the interests of justice to allow the claimant's application for reconsideration, limited as it is, to be granted.

28. The claimant asks that the Tribunal revoke its Judgment of 15 March 2021, but only in respect that he wishes to add a claim for indirect discrimination.

29. It is useful to consider the terms of that Judgment insofar as relating to the two claims now sought to be added as indirect discrimination, at paragraphs 66 and 67:

5           66. *The difficulty for the Tribunal is that the claims in these two paragraphs are now said to be claims of indirect discrimination, duty to make reasonable adjustments and discrimination arising from disability, but that no further specification of the claims is provided.*

10           67. *If the claimant wishes these complaints to be categorised as indirect discrimination, he requires to set out much more detail as to the basis upon which he makes that claim: by specifying the PCP upon which he relies, the substantial disadvantage to which a group bearing his protected characteristic would be subjected by the application of that PCP, and the substantial disadvantage to which he*  
15           *was subjected by the application of that PCP.*

30. In his application for reconsideration, it is plain that the claimant is now seeking to deal with the criticisms made in these two paragraphs, and has therefore ventured to expand upon his original application to amend by  
20           adding PCPs, and disadvantages, as set out in them.

31. In my judgment, this is, as Ms Reynolds observed, an attempt to amend further, by seeking to add to the earlier attempt to amend the claim.

32. Given the clear statements in that earlier Judgment about the need both for clarity and finality, which had been spelled out before by Employment Judge  
25           Porter, it is plain that the claimant has not done as he was asked, but has continued to seek to alter the basis of his claim.

33. Accordingly, this is not truly an application for reconsideration of the earlier Judgment, but a request to accept an adjusted version of the earlier application to amend his claim.

34. The claimant was warned, at paragraph 73, that he should not assume that any further amendments would be granted.

35. It is my judgment that it would not be in the interests of justice to revoke or vary the terms of the earlier Judgment.

5 36. The claimant has not demonstrated any basis upon which that Judgment was not well-founded. Indeed, it appears that he accepts that it was logical and rational. What he has sought to do is to alter the basis of his application to amend, in order to provide substance to the application which lacked it when considered by me in the earlier Judgment.

10 37. In any event, in my judgment, the application for reconsideration is an attempt to rehearse all the arguments which the claimant made in advancing his application to amend, and therefore adds nothing new to the considerations to be taken into account in determining this matter.

15 38. As a result, there is no basis upon which the application for reconsideration can succeed, and it is refused.

20 39. It should be said that it is not clear that the claim for indirect discrimination is properly founded, in any event. The PCP is one which suggests that it was the respondent's practice in all cases not to apply its own Ethics Policy, a surprising assertion for which there is no basis offered in the pleadings. Further it is entirely unclear how this would have placed the claimant and others of his protected characteristic at a substantial disadvantage when compared to those who did not share that protected characteristic. What the claimant has set out in his pleadings is not a disadvantage but what he maintains are the consequences of a disadvantage. There is no foundation  
25 in his pleadings for his complaint that failing to apply the Ethics Policy could have placed him as a disabled person at any disadvantage compared to any other employee for whom that policy was not applied.



40. However, that is not the matter before me. The issue for disposal is whether or not the claimant's application for reconsideration should be granted, and in my judgment it is not in the interests of justice to do so. The claimant's application is therefore refused.

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Employment Judge: Murdo Macleod  
Date of Judgment: 22 July 2021  
Entered in register: 26 July 2021  
and copied to parties

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