



EMPLOYMENT TRIBUNALS

Claimant: Dr C Johnson (registered as Dr I Ivanov)

Respondent: Aintree University Hospital NHS Trust

JUDGMENT

The claimant's application titled "*motion to restore victimisation*" and sent by email dated 14 July 2021, for reconsideration of the judgment sent to the parties on 26 June 2021, is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's letter, emailed to the Tribunal on 14 July 2021 and titled "*Motion to restore victimisation*". I have treated this letter as an application to reconsider the judgment dismissing the claimant's claim of victimisation.

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"

5. 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. Achieving finality in litigation is part of a fair and just adjudication.

The Application

6. The claimant in this case confirmed to the Tribunal that he was withdrawing his claim of victimisation. The claim was, accordingly, dismissed. It is that dismissal the claimant seeks to have revoked.
7. A claim of victimisation under the Equality Act 2010 has a very specific meaning which does not reflect common usage of the word '*victimisation*'. It can only be made if a claimant alleges mistreatment specifically in response or retaliation to them having done a '*protected act*'. A '*protected act*' must relate in some way to a breach of the Equality Act.
8. This was explained, in part, to the claimant at the hearing. It was not explained fully as the claimant interrupted, apparently understanding the point, part way through the explanation. The claimant at that time stated, clearly and emphatically, that he was withdrawing his claim of victimisation. This was understood to be because the events he sought to rely on as a '*protected act*' related to infection control issues, which are in no way connected to the Equality Act 2010.
9. The claimant was then asked, and confirmed, his withdrawal of his victimisation claim. It is noted that the acts which the claimant complains about continue to be relied on in support of his other claims. No other claim was withdrawn.
10. Accordingly, there is no prospect that the dismissal judgment will be reconsidered.

Conclusion

11. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original dismissal judgment being varied or revoked. The application for reconsideration is refused.

Employment Judge Buzzard
3 August 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
10 September 2021

FOR THE TRIBUNAL OFFICE