



EMPLOYMENT TRIBUNALS

Claimant: Mr T Skillen

Respondent: Thomas Armstrong (Aggregates) Limited

JUDGMENT

The claimant's application dated 26 April 2021 for reconsideration of the judgment sent to the parties on 20 June 2019 is refused.

REASONS

1. I have undertaken a preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. I have also considered comments from the respondent.

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. The majority of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. In that sense they represent a “second bite at the cherry” which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

8. That broad principle disposes of almost all the points made by the claimant. However, there are some points which should be addressed specifically.

9. The request for reconsideration is out of time by over 18 months, and the claimant has not satisfactorily justified the delay.

10. The claimant asserts that Mr Denham has presented new evidence in his statement exchanged as part of the respondent’s counterclaim, which post dated the Judgement in the claimant’s claim. However the claimant has delayed more than 6 months since he received that alleged new evidence before applying for reconsideration and is seriously out of time, without any justification at all.

Conclusion

11. Further I consider that there is no reasonable prospect of the original decision being varied or revoked, as the respondent’s evidence, from several witnesses, was preferred by the Tribunal and Mr Denham’s statement does not affect their credibility. The application for reconsideration is thus refused.

Employment Judge Warren

DATE 2 September 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

10 September 2021

FOR THE TRIBUNAL OFFICE