



**EMPLOYMENT TRIBUNALS**

**BETWEEN**

**Claimant**  
**MR M MAETRY**

**Respondent**  
**G4S SECURITY SOLUTIONS UK LTD**

**Judgement on Reconsideration**

**ON: 1 October 2021**

**Employment Judge Russell (sitting alone)**

**Reconsideration of Judgment**

The Claimant has applied for a reconsideration of part of my judgment of 29 July 2021 following an open preliminary hearing of 27 July 2021. The part of the judgment he refers to is that which determined that “The Claimant’s race discrimination claims are dismissed upon withdrawal”.

The Reconsideration under rule 70 and 71 of the ET Rules is however refused. It is not necessary in the interests of justice to reconsider the judgment. And applying rule 72 (1) there is no reasonable prospect of the original decision being varied or revoked.

Further to EJ Baty’s order of 29 September refusing the respondent’s application for a postponement of the full hearing listed for 11-13 October 2021 (subject to this reconsideration) it is again confirmed that this full hearing will proceed. And will deal with, inter alia, the Claimant’s unfair dismissal case but not his original race discrimination case which remains dismissed.

**Reasons**

1. On 27 July I heard from both parties as part of an OPH to determine what claims might proceed to a full hearing and to give case management. The resulting judgement which I gave /was promulgated on July 29 stated that
  - The Claimant’s race discrimination claims are dismissed upon withdrawal.
  - The Claimant’s claim for accrued holiday pay is dismissed upon withdrawal.
  - The Claimant’s claim of unauthorised deduction from wages in respect of wages to from 27 of April 2020 shall continue to be considered at a full hearing along with his claim of wrongful dismissal in respect of unpaid notice pay.
  - The full hearing to deal with liability and remedy if appropriate shall take place over

three days commencing on 11th of October and continuing on 12<sup>th</sup> and 13<sup>th</sup> October 2021 [ and case management orders were given in respect of this hearing].

2. I stated in the case management orders that “ *In light of [this] discussion the Claimant indicated that he wished to withdraw his stand-alone claim of race discrimination but wished to proceed with his claim of unfair dismissal ,perhaps referring to his previous poor treatment as background . He feels that the disciplinary action subsequently taken against him following his suspension 27 April 2020 was based not on the altercation that he had with his manager on 25 April or any previous refusal to patrol what he regarded as rat infested areas (without adequate health and safety protection) but was instead “revenge “from the Respondent for his previous complaints against management and HR”*”
3. Rule 71 of the ET Rules states that . “Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary”. It is not wholly clear to me when the Claimant made his application for a review and whether this was in time. It seems not. However, I have , in any event , reviewed the decision and the reconsideration application made as if it was in time.
4. The Claimant wishes to resurrect his race discrimination claim as part of his application for a reconsideration.I am satisfied that was the Claimant’s started view at the time and unequivocally expressed and based on a clear explanation of the facts and circumstances of the case.
5. I note that other than indicating a wish to have my decision reconsidered and to include a claim of race discrimination once more the Claimant gives no reasons for this. He states he has evidence of discrimination but does not dispute that he withdrew such claim at that time or seek to explain why that might have been done in error and or due to a misunderstanding ( by him or as to what he said ) and or misconception and or misstatement made to him. Nor was any point raised with me on the day when I made it clear that the judgement was to be. The Claimant voluntarily withdrew his race discrimination claims and cannot revisit this now.
6. Although the Claimant has asked for a translator at the full hearing to assist him as his first language is Arabic the Claimant speaks good if not perfect English. I am satisfied that he understood the proceedings and the points clearly made to him which included the consequences of withdrawing his race discrimination ( and also his accrued holiday) claims.
7. In deciding whether or not to reconsider the judgment, the authorities indicate that I have a broad discretion, which “*must be exercised judicially ... having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible be finality of litigation*” (*Outasight v Brown* [2015] ICR D11). The Court of Appeal in *Ministry of Justice v Burton* [2016] ICR 1128 also emphasised the importance of the finality of litigation.
8. That said, if an obvious error has been made which may lead to a judgment or part of it being corrected on appeal, it will generally be appropriate for it to be dealt with by way of reconsideration: *Williams v Ferrosan Ltd* [2004] IRLR 607 at para 17 *per* Hooper J (an approach approved by Underhill J, as he then was, in *Newcastle upon Tyne City Council v Marsden* [2010] ICR 743 at para 16).

9. It may also be appropriate for a judgment to be reconsidered if a party for some reason has not had a fair opportunity to address the Tribunal on a particular point (*Trimble v Supertravel Ltd, Newcastle-upon-Tyne City Council v Marsden* *ibid*).
10. However, the Claimant did have that full opportunity and did avail himself of it. A mere failure by a party or the Tribunal to raise a particular point is not normally grounds for reconsideration (*Ministry of Justice v Burton* (*ibid*) at para 24) – an application for reconsideration is not an opportunity to re-argue the merits. But more significantly here the Claimant chose to withdraw his race claim without any pressure from me to do so and he did so without equivocation. Whilst I accept that he was unrepresented and may now have had a change of heart he was the one who chose to withdraw the race claim and it was only then that it was dismissed.
11. I consider that there is no reasonable prospect of my judgment being varied or revoked and for all the reasons explained above the Claimant's application for reconsideration is therefore refused on the papers under Rule 72(1).

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EMPLOYMENT JUDGE -Russell

1 October 2021  
Order sent to the parties on

07/10/2021

for Office of the Tribunals