



EMPLOYMENT TRIBUNALS

Claimant: Dr R Masunga
Respondent: Bishop Grosseteste University

Heard at: Nottingham

Before: Employment Judge Blackwell

RESERVED JUDGMENT

Pursuant to Rule 70, 71 and 72(1), of schedule 1 of the
Employment Tribunals Constitution and Rules of
Procedure Regulations 2013

Decision

1. The Claimant's application for a reconsideration dated 12 April 2021 is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

"Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. 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.

Process

72. (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or

revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application".

1. Following a 3 day hearing a reserved Judgment with Reserved Reasons dismissing all of Dr Masunga's claims of direct discrimination was sent to the parties on 30 March 2021.
2. By an application by email of 12 April 2021 Dr Masunga applied for a reconsideration. There are 3 parts to that application. The first is headed new evidence and relates to a schedule indicating that between 19 January 2018 and 11 May 2018 Dr Masunga made 5 telephone calls to the Respondent's telephone number. Dr Masunga was cross examined as to the telephone calls he said he made because his evidence was "I made several phone calls and contacted (CSIC) Juliette Lindley Baker by email on 12 January 2018, 8 March 2018 and Graham Meeson on 8 March 2018 but did not get any response, see bundles pages 198, 203 and 212".
3. At paragraph 78 to 80 of the original decision we set out as follows:

"78. This is described as deliberate silence and the less favorable treatment is the failure of the University to reply to Dr Masunga's messages and telephone calls and to address his concerns about getting VT work.

79. The facts we have set out above in summary Dr Masunga sent 3 e-mails at pages 198, 203 and 212 to which he received no substantive response. As to telephone calls Dr Masunga asserts that he made a number of such calls to Dr Meeson and Ms Lindley-Baker. There is however no documentary evidence to support that contention and we find it surprising that there is no such evidence given the concerns that Dr Masunga now expresses about the "deliberate silence".

80. Dr Meeson's explanation in cross examination was in effect that he was too busy and that he had overlooked Dr Masunga's e-mails. Ms Lindley-Baker evidence was to the effect that it was Dr Meeson's responsibility to respond because:-

(a) He was the head of the department.

(b) It was he who had included Dr Masunga on the VT list, she having decided that he did not fit her requirements. She also said that she did not wish to get into a dialogue with Dr Masunga because that might give him false hopes.

We accept those explanations".

4. Dr Masunga in evidence did not suggest that any of the calls to which he referred in his evidence in chief were with either Ms Lindley Baker or Dr Meeson. Nor was it put to either them that they had failed to respond to telephone conversations

rather that they had failed to respond to emails as indeed we found that they had so failed.

5. Dr Masunga asserts that the schedule of telephone calls should have been included within the bundle and was not despite an assurance from the Respondent's solicitor. I note that was in regard to the preliminary hearing held on 15 January 2020, but I accept that the schedule is relevant to the second allegation which the Tribunal determined.
6. At no stage did Dr Masunga refer to the schedule of telephone calls nor to the fact that it was missing from the trial bundle. We also note that the trial bundle was accepted as agreed by both parties at the beginning of the hearing.
7. The second matter raised by Dr Masunga in his application is that he says "on day three of the final hearing something horribly went wrong during the hearing process, such that I could not take to my concluding remark script. I had chest pains and a debilitating headache that distracted my attention and I lost orientation but had to persevere to the end because I did not want to disturb the proceedings."
8. The Tribunal were not made aware of Dr Masunga's indisposition and so could not react to it. The point which Dr Masunga says he would have made had he been able to was that it was unfair to compare Dr Masunga's CV to those of Sean Ingoldsby and Louise Connelly. We referred to that material so as to see whether an inference could be drawn of race discrimination. Such an inference could have been drawn if the CV's revealed for example that Mr Ingoldsby and Miss Connelly did not have relevant experience. We set out our conclusions in that regard at paragraph 94:

"94. There was less favorable treatment in that Dr Masunga did have to go through an application and interview process when Mr Ingoldsby and Ms Connolly, both white, did not. We accept that there was an informal route to appointment where candidates were known to the University. Again, it can be seen from their respective CV's that they were both better suited to roles within the SEND department than Dr Masunga. Again, there are no facts from which an inference can be drawn that the decision to appoint Ms Connolly and Mr Ingoldsby by an informal process and not Dr Masunga was influenced by their respective race".

9. The third and final matter raised by Dr Masunga is that the Tribunal allowed the Respondents to get away with failure to comply with Tribunal directions in regard to disclosure. This was a matter which was discussed at the beginning of the hearing. It was made clear to Dr Masunga that if he felt he was disadvantaged by the admitted late disclosure it was open to him to make an application for a postponement. He did not do so.

Conclusions

10. The test in respect of the application is "Is it necessary in the interests of justice to do so", the phrase interests of justice is a very wide application and requires the

consideration of the overriding objective set out in Rule 2 of the said referred schedule.

11. With that in mind as to the first issue raised in the application it seems to me that it would not have affected the conclusion we reached which relied on the admitted failure to respond to a series of emails. We accepted Dr Meeson and Miss Lindley Baker's evidence as to why they had not responded.
12. As to the second matter since Dr Masunga did not raise his indisposition it could not be dealt with. Further the matters he does raise are covered in our decision and effectively as Dr Masunga says he's dissatisfied with the conclusions that we drew.
13. As to the third matter it was open to Dr Masunga to apply for a postponement on the first day of the hearing and he did not do so. Further I am satisfied that Dr Masunga, having regard to his conduct of the case and his cross examination was in command of the documentary evidence and was not disadvantaged by the admitted late disclosure. For all those reasons I refuse the application because there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge Blackwell

Date: 27 July 2021

JUDGMENT SENT TO THE PARTIES ON

29 July 2021
FOR THE TRIBUNAL OFFICE

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