EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondents**
Mr N Mendy		(1) Motorola Solutions UK Limited (2) Motorola Solutions Inc (3) Ronan Despres (4) Fergus Mayne (5) Carole Lawrence (6) Uwe Niske

JUDGMENT ON SECOND RECONSIDERATION APPLICATION (FOLLOWING EAT APPEAL)

1. By Order dated by me 13 September 2021 I set out my provisional views on reconsideration in light of the Order of the Honourable Mrs Justice Eady DBE sealed on 31 August 2021.

2. I directed both parties to provide submissions on my provisional views by 30 September 2021 and by Order of 30 September 2021, in light of the Claimant's application for an extension, I granted both parties an extension of time for making submissions to 7 October 2021. I also directed that both parties should provide submissions on next steps in the substantive proceedings, as it seems to me that this claim is in urgent need of progression to a substantive hearing.

3. I have now considered the parties' submissions. The Respondent agrees with my proposed amendments to the Judgment on the Claimant's Interim Relief application sent to the parties on 25 June 2020. The Claimant does not, but seeks to re-argue his entire case and to make submissions as to why I should reconsider not only my 25 June 2020 judgment, but also my judgment sent to the parties on

11 July 2020 refusing his application for reconsideration of that judgment and my 'judgment' (i.e. my provisional views) of 13 September 2021.

4. I do not consider that it is necessary for me to hold a hearing to determine the Claimant's application under Rule 72(2).

5. This is because the scope of the issue that was remitted to me to consider in the light of the one point on which the Claimant's appeal to the EAT partially succeeded is very limited indeed and, although I have read the Claimant's submissions carefully, I cannot see anything in the Claimant's submissions that persuades me to alter my provisional views on that particular point. All that he says regarding my error in the date of the email is that in his view this confirms that I was biased and that I was wrong to focus on the aspects of this email that the Respondent considered crossed the line into misconduct. However, I was not biased and the EAT did not uphold the Claimant's appeal on that ground. Further, my focus was on the aspects of the email that were relevant to the issue that I had to decide, which was whether the Claimant was more likely than not a trial to succeed in showing that a protected disclosure rather than misconduct (of which this email was but a part) was the sole or principal reason for his dismissal. That was a view necessarily and appropriately reached at an interim stage on the basis of a high level assessment of the evidence before me and the parties' cases as they were presented at the hearing. The more detailed analysis, argument and fact-finding that the Claimant wishes to see will happen at the final hearing.

6. Insofar as the Claimant seeks to argue or re-argue many other points, he is a long way outside of the 14-day time limit in Rule 71 for reconsideration of the my judgments of 25 June 2020 and 11 July 2020 and there is no good reason for that. The EAT's order was not an order that re-opened the Claimant's case save in the limited respect that I was invited to reconsider. It would be contrary to the strong public interest in the finality of litigation for me to permit the Claimant to make what would in effect be a third application for reconsideration of a judgment I reached on an interim relief hearing well over twelve months ago and in respect of which he has already had the benefit of an EAT appeal. I therefore refuse the Claimant's wider reconsideration application under Rule 71.

7. I add that it would be entirely contrary to the over-riding objective of doing justice between the parties, fairly and within a reasonable time and avoiding expense, for any more time to be spent on the Claimant's attempts to overturn my judgment on his <u>interim relief</u> application. This case should have gone to a substantive <u>final hearing</u> some time ago where the evidence and arguments of both parties could be considered fully and properly in the normal way. I understand that although there appears to have been a delay on this case between January and August 2021, an order was made following a Case Management Preliminary Hearing in August 2021 and that a Final Hearing is now listed for May 2022. That is the hearing at which the points the Claimant now raises can be determined, if he chooses to pursue them.

8. So far as the present reconsideration application is concerned, I make the amendments I proposed in my 13 September 2020 Order to the Judgment of 25 June 2020, with one minor adjustment, in that in order to maintain the chronology of the judgment I have moved what was paragraph 23 to paragraph 42.

9. The reasons for the amendments remain essentially unchanged and are as follows:-

10. I am ordered by the Employment Appeal Tribunal (EAT) to consider as an out of time application for reconsideration/alternatively to answer the following questions:-

    a. Considering the email chain attached to the order, it would appear that the statement made by the Appellant, as cited by the Employment Tribunal at paragraph 23 of its interim relief Judgment, was in fact contained with an email of 3 March 2020 (not 2 December 2019). Should the Employment Tribunal's Judgment be corrected to reflect this?

    b. If there should be such a correction, does that impact at all on the Employment Tribunal's conclusions on the question of interim relief, in particular in the reference to this email at paragraph 84? If not, why not?

11. Having reviewed the file, I agree that the email quoted at paragraph 23 of my judgment of 25 June 2020 was contained in an email of 3 March 2020, not 2 December 2019. This is an error and I have amended the judgment at paragraphs 23, 52 and 84 to reflect this. I believe the error crept in because in the dismissal letter of 5 May 2020 from Mr Mayne (which is summarised at paragraph 52 of the judgment and appears at pp 498-501 of the bundle), Mr Mayne appears to refer to this email as dating from 2 December 2019 (penultimate paragraph of p 499) and this is also in the subject heading of the email.

12. Had I recognised the error in the date when writing the original judgment, I would not have expressed paragraph 84 as I did, but would simply have omitted the sentence that previously referred to that email. The difference in dates seems to me to make no difference to the substance of my reasoning. It remains the case that the disciplinary proceedings were commenced on 26 November 2019 prior to the Claimant making his alleged protected disclosures to Mr Woodford on 16 January 2020 and 13 February 2020 and thus could not have been motivated by the protected disclosures. The email of 3 March 2020 of which Mr Woodford took a particularly dim view was written after those protected disclosures not before as I said in paragraph 84, but that point was an insignificant part of my reasoning and the points that I make at paragraph 83 about the content of this (and other emails) seem to me to be unaffected by the change in date. This email was one of the 'lengthy, rude and inflammatory' emails that the Claimant had written which in my judgment were such that it was not likely that the Claimant would at full hearing succeed in showing that the principal reason for dismissal was his alleged protected disclosures rather than the matters (including this email) referred to in Mr Mayne's letter dismissing the Claimant. That was the main question for me on

the interim relief application and in my judgment the change in date makes no difference to that.

13. The revised judgment is re-issued with this judgment.

Employment Judge Stout

11 October 2021

JUDGMENT SENT TO THE PARTIES ON

12/10/2021

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FOR THE TRIBUNAL OFFICE