EMPLOYMENT TRIBUNALS

Claimant: Mr S Ward

Respondent: Department for Work and Pensions

HELD AT: Manchester (by CVP) **ON:** 20 April 2021

BEFORE: Employment Judge Holmes

REPRESENTATION:

Claimant: Mrs L Ward, Wife
Respondent: Mr E Beever, Counsel

RESERVED JUDGMENT ON APPLICATION FOR RECONSIDERATION

It is the judgment of the Tribunal that:

The claimant's further application for reconsideration of the Tribunal's judgment of 29 October 2018, sent to the parties on 2 November 2018 is rejected as having no reasonable prospects of success, pursuant to rule 72(1) of the 2103 rules of procedure.

REASONS

1.Introduction

1. The application was first made on 12 October 2020, and was further advanced by email of 2 November 2020.

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 claimant first made the application, in effect, in an email of 1 October 2020 to the Tribunal, in which Mrs Ward said this:

"The McCloud judgment has just come to our attention and we consider it is relevant to the issues the claimant raised in his claim with respect to his Ill Health Retirement (IHR) application and the subsequent fiasco he enduring trying to ensure he received his entitlement at the correct Classic pension rate.

The McCloud judgment confirms members of DWP staff were moved to the Alpha pension scheme in the year of 2015. The claimant put forward that his managers had

transferred him to the Alpha scheme without any prior consultation due to the fact he was on sick leave at that time. Further attempts were made by Adrian Williams to have the claimant complete another IHR application well into the year of 2016; Adrian only ceased when the claimant advised he would pursue a claim for harassment.

If you will recall, during the hearing held at Blackpool, the respondent submitted into evidence a date stamped form claiming it had been received from Capita as receipt for the claimant IHR application. We have confirmed with Capita over the telephone this is not a process they use and await confirmation in writing via a DSAR.

We are extremely concerned the respondent knowing submitted false/fabricated evidence into the court.

Please can you confirm if this is an act of perjury and what we should do to address going forward? Witnesses under oath, namely Adrian Williams, supported by Ms Helen Trotter, affirmed the documents to be from Capita and indeed brought the documents to the hearing at Blackpool knowing they were false but chose to submit them anyway to discredit the claimant's true claims."

8. The Tribunal sought clarification of what the claimant was seeking, and the basis for it, and by email of 5 November 2020 Mrs Ward said this:

"As requested by Judge Holmes, the following is the claimant's findings of fact with respect to the allegation of fraudulent conduct regarding the submission of his IHR application, evidence submitted by the respondent in order to mislead the court, and IHR pension discrimination.

The claimant alleged discrimination and harassment with respect to the submission of the Ill Health Retirement (IHR) application form; namely, the respondent's agent Adrian Williams, held off submission of the claimants IHR application until after the 1at April 2015, the date the Pension Reform came into effect/force.

Adrian Williams then concocted evidence he knew to be false, submitted it into evidence, and under oath swore to its authenticity during the hearing of the claimants claims at Blackpool.

***The McCloud Judgment -** Neutral Citation Number: [2018] EWCA Civ 2844*

We consider the relevant paragraphs of the judgment are: -

***Paragraph 3** – Hutton Report recommended wholesale public sector pension reform in order to place public sector pensions on a more sustainable footing.*

***Paragraph 6** – Confirms those protected. The claimant did not fall into that bracket.*

***Paragraph 8** – Confirms only those closest to retirement would not suffer a detriment. The claimant did not fall into that bracket.*

Paragraph 23 *– Confirms the transfer took place on 1st April 2015. This affirms the discrimination alleged by the claimant with respect to when his IHR application was sent to Capita.*

Paragraph 55-57 *– Judge Williams summarised conclusions.*

Paragraph 100 *– Conclusions on 1st Appeal*

Paragraph 233 *– Final conclusions*

The claimant's allegations of fraud and discriminatory conduct.

The claimant sent his completed IHR application form to Adrian Williams by email February 2015; Adrian Williams held off submitting the IHR application form until after the 1st April 2015 had passed as that was the date the respondent transferred its staff to the Alpha scheme by way of their Pension reform.

The claimant knew nothing of the Pension Reform as he was on sick leave and was not made aware by his managers or any agent for the respondent.

The claimant only became aware his pension had been altered when his IHR was approved and he received notification from MyCSP he would be receiving IHR via the Alpha pension. Receiving this notification was extremely distressing however the claimant had records that his IHR application was sent to the respondent at the beginning of February 2015, the claimant engaged directly with MyCSP.

Following acceptance of his IHR application the respondent's agent Adrian Williams began sending emails to the claimant asking him to complete another IHR application form, post-dating the original and therefore superseding the date of February 2015.

Kevin O'Reilly, legal representative for the respondent, sent a letter to the claimant in which he documents the respondent's concern the claimant was not being paid and offered some form of assistance to resolve. The letter caused distress as the claimant knew something untoward was going on. The claimant wrote back confirming he did not require any help from Mr O'Reilly.

Adrian Williams, agent for the respondent, continued to harass the claimant around his IHR and the completion of another IHR application form, which in itself is absurd because the claimant's IHR had been accepted and finalised; Adrian Williams did not stop until he was threaten with a claim of harassment approximately August 2016, should he continue to harass the claimant. The claimant was accepted for IHR, his last day of service was 26th February 2016.

During the last week of the hearing of the claimants claim at the Blackpool County court, the respondent submitted into evidence an IHR application form which had been date stamped on the front page, there was no reference number or accompanying documentation, however the respondent claimed the form was

received by way of receipt from Capita. An example of a receipt from Capita is held at page 95 (bottom left page number), (centre No 103), of bundle 3 (2015).

Capita have confirmed, over the telephone, they would not send back an application form with a date stamp and that the document held at page 95 (bottom left page number), (centre No 103), of bundle 3 (2015) is the receipt they provide. We currently await provision of a DSAR which will confirm our claim of fraud.

The respondent submitted into evidence information it knew to be false in order to discredit the allegation of discrimination made by the claimant, and as the false evidence was submitted during the hearing it brings into question Counsel for the respondent and their collusion in the fraud.

It is clear from the McCloud judgment the respondent discriminated against its staff when it transferred them to the Alpha scheme, and within that group of staff was the claimant. It is therefore preposterous to suggest the claimant was not discriminated against as the judgment confirms the Pension Reform was applied "wholesale" across the business.

The issue is fraudulent conduct by the respondent, and their agents; Adrian Williams testified under oath to the truthfulness of the evidence and actions taken in order to clear itself of the discrimination alleged by the claimant with respect to the late submission of his IHR application ensuring the claimant was transferred to the Alpha scheme. The detriment to the claimant the loss of the lump sum.

The court is a place where truth and honesty are paramount and any deviation from that results in a lose of faith in the service, and justice not being done as is the case with the claimant. The claimant had to endure considerable stress and upset with respect to his IHR pension. The respondent thinks it can simply lie and enter false evidence onto the record in order to stick the boot in so to speak demonstrating its utter distain for the law and its duties under said law.

We are unclear of the next steps as we are not legally trained however the information gleaned suggests we are required to ask permission from Judge Holmes to instigation proceedings for contempt of court or perjury. We would appreciate very much some guidance from the court as to next actions".

9. The Tribunal's first task has been to identify what findings in the reserved judgment the claimant is seeking to have reconsidered. In terms of the claims to which this application may relate, it must be no. 94 on the Scott Schedule (page 273I of the Pleadings file) which is a claim of victimisation, or harassment , in which the claimant alleges that Adrian Williams delayed submission of the claimant's application for IHR so as to ensure it was received after 1 April 2015. That date is significant, as the claimant contends that if the relevant pension scheme in which he was enrolled changed before the application was submitted, the benefits he would receive under the IHR provisions would be reduced.

10. The Tribunal's findings of fact in relation to this issue are at paragraphs 5.244 to 5.260 of its reserved judgment. Its findings in relation to the claims are at para. 86 to 87 of the reserved judgment, in respect of the victimisation claim, and para. 172 in

relation to the harassment claim. The latter is dismissed because the Tribunal found that the alleged conduct did not have the requisite intention or effect, but , it could be added, on the facts, the Tribunal did not accept that Adrian Williams had submitted the IHR application after 1 April 2015. The facts show that he had submitted, if unsuccessfully, the application before 1 April 2015.

11. It is hard to understand what significance the claimant is saying McCloud (i.e ***McCloud v M o J [2018] EWCA Civ 2844***) judgment has. All it does, as far as the Tribunal can see, is provide confirmation that the respondent changed its pension schemes on 1 April 2015. That may have been held to be indirect discrimination, for those affected, but that is not a claim that the claimant has made, and, as far as the Tribunal is aware, he could not, because, eventually, his IHR was accepted, and his pension was granted on the basis that , at the material time, he was a member of the "Classic" scheme, and had not transferred onto the less favourable Alpha scheme.

12. The remainder of the application relates to allegations that the claimant can, or will be able to, demonstrate that the evidence that Adrian Williams gave as to when he submitted the IHR form was false, based upon potential evidence from MyCSP about date stamps. No such evidence, however, has yet been produced, and it is now a year since this application was made. There was ample documentary evidence before the Tribunal , referred to in its findings, that Adrian Williams did submit, or tried to submit, the IHR application before 1 April 2015.

13. Finally, it is to be recalled that the sole test for reconsideration is now whether it is in the interests of justice to reconsider a judgment. The aspect of the judgment that the claimant seeks to reconsider relates to one allegation, though put as two claims, that of Adrian Williams deliberately delaying submission of the IHR application so as to disadvantage the claimant in respect of the relevant pension scheme under which the application would be considered. The Tribunal's understanding is that, whatever the problems, and the protracted nature of the application being accepted , and then the pension being paid, eventually the application was accepted, on the basis that the claimant was in the "Classic" scheme, and his pension was assessed and paid accordingly. There would thus be no sustainable claim for any financial loss, as the claimant did not, ultimately, suffer any. If these claims were reconsidered, and succeeded, all that would entitle the claimant to would be an award for in jury to feelings. He is already likely to be entitled to such an award, and in assessing what is the appropriate level of award the Tribunal will take into account all the consequences of the proven acts of discrimination. Whether the result of any separate and distinct act of discrimination on the part of Adrian Williams, the Tribunal assess the period in question and consider whether it flows as a consequence of the proven acts of discrimination, and, if it does, and thereby prolongs the claimant's anxiety and uncertainty, thereby exacerbating the effects of any acts of proven discrimination, these matters may still, without any further acts of discrimination, fall to be taken into account in assessing the correct level of award for injury to feelings.

14. This application has no reasonable prospects of success, and it is refused pursuant to rule 72(2) of the rules of procedure.

Employment Judge Holmes
Dated: 19 October 2021

RESERVED JUDGMENT SENT TO THE PARTIES ON 2 NOVEMBER 2021

FOR THE TRIBUNAL OFFICE