02

EMPLOYMENT TRIBUNALS

Claimant: Mr. J Urwin

Respondent: Communities Academy Trust

JUDGMENT

The claimant's application dated 17 September 2020 for reconsideration of the judgment sent to the parties on 02 September 2020 is refused.

REASONS

I find that that there is no reasonable prospect of the original decision being varied or revoked because:

1. The claimant's arguments for reconsideration are based on the fact that he disagrees with the findings of fact made by the tribunal. The claimant is unhappy that, in certain respects, the panel preferred the evidence of the respondent's witnesses. However, it is not the case that the "tribunal rubberstamped" the respondent's witnesses' evidence as the claimant alleges and our judgment makes that clear.

2. The claimant's criticism of our reasoning and application of the law to the facts as found them is misconceived. It is incorrect to say that "The ET has taken the view of the Claimant as someone who is not disabled or has severe PTSD that is highly triggered by stressful workplace disciplinaries". Disability was conceded and our judgment makes that clear and takes that into account.

3. The panel sought to go out of its way to stress that we appreciated how difficult the claimant says he found the disciplinary process, but as the judgment explains the material issue in relation to a number of the claimant's claims was whether the respondent knew or ought to have known that the claimant was disabled at the relevant time. That issue is quite distinct to whether the claimant was disabled or indeed how he felt at the time. Our finding, for the reasons we explained in our judgment, was that the respondent did not know the claimant was disabled at the relevant time nor can it be said it ought to have known that from the information available to it. Further it would have be an error of law for the tribunal to look at the extent of the claimant's disability at the tribunal hearing as the claimant seems to suggest in his application. We were concerned with the

claimant's disability at the time of the alleged discrimination and the evidence available to us about that.

4. The claimant's criticism of the finding of contributory conduct is also misconceived. The tribunal applied the relevant legal tests. The claimant did not present any evidence that his PTSD would tend to cause him to make inappropriate criticism of child A in his statement to the disciplinary panel. That was not part of his case. The finding that this was contributory conduct was not discriminatory as the claimant asserts ("To make a reduction on the Claimant's attitude and what the claimant said about A whilst traumatised puts him at a disadvantage because of something arising from his disability"). The tribunal considered what ordinarily would have been compelling arguments that the claimant's conduct (his blameworthy conduct was not limited to the statement about A) should have resulted in a very substantial reduction for contributory conduct, possibility as high as 100%. The tribunal did not apply that level of contribution because we found that the respondent's treatment of the claimant was partly to blame for how he behaved during the disciplinary process. However it was the tribunal's unanimous conclusion that the claimant's disability, however severe, did not explain or excuse all of his blameworthy or culpable conduct, indeed that was not how he presented his case. It is just and equitable for his compensatory and basic awards to be reduced under s122(1) and s123(6) of the Employment Rights Act (ERA).

5. The claimant's application for reconsideration wrongly suggests that a 25% "Polkey" reduction was made (under s123(1) of the ERA). In fact despite the submissions of the respondent that a 100% reduction should be applied under s123(1) we declined to apply any reduction at all.

6. Under rule 70, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'. It is perhaps inevitable that every unsuccessful litigant believes it would be in the interests of justice for the aspects of decision they do not agree with to be reconsidered but in considering the application of what is in the interests of justice I must take into account the overriding objective to deal with cases 'fairly and justly' — rule 2. This means that I must have "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 VB Ltd v Brown 2015 ICRD11, EAT).

7. I am satisfied that the findings of fact the tribunal made in this case were fair and proper based on the evidence presented to us and that the law was correctly applied to those findings. A reconsideration would not be in the interests of justice.

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Employment Judge Cookson

Date 25 September 2020 JUDGMENT SENT TO THE PARTIES ON

....................25/09/2020........................

Diana Bhutta

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11.6C Judgment – Reconsideration refused – claimant - rule 72