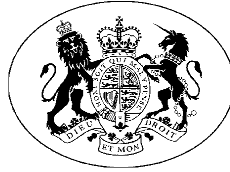

EMPLOYMENT TRIBUNALS

Claimant: Mr M Kler

Respondent: Quill Pinpoint Limited

JUDGMENT

The claimant's application dated **17 October 2021** for reconsideration of the judgment sent to the parties on **4 October 2021** is refused. It has no reasonable prospects of success.

REASONS

1. By an email dated 17 October 2021 the claimant applied for reconsideration of the Tribunal's judgment with reasons sent to the parties on 4 October 2021 ("the Judgment" and "the Reasons"). The Tribunal panel for the case consisted of myself, Ms Dowling and Mr Anslow. In our Judgment we dismissed the claimant's complaints of direct race discrimination and direct religion or belief discrimination.

Relevant Law

2. An employment tribunal has a power to reconsider a judgment "where it is necessary in the interests of justice". On reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again (Rules 70-73 of the Employment Tribunal Rules 2013 ("the ET Rules")).

3. An application for reconsideration shall be presented within 14 days of the date on which the judgment was sent to the parties. It must be copied to the other party (rule 71 of the ET Rules).

4. Applications are subject to a preliminary consideration by an Employment Judge. They are to be refused if the judge considers there is no reasonable prospect of the original decision being varied or revoked (rule 72(1) of the ET Rules). If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing (rule 72(2) of the ET Rules).

5. The "interests of justice" allows for a broad discretion. That discretion must be exercised judicially, which means having regard not only to the interests

of the party seeking the 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] ICR D11, EAT para 33**).

6. Achieving finality in litigation is part of a fair and just adjudication. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714**. It has also been the subject of comment from the then President of the Employment Appeal Tribunal in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** (paragraph 34) in the following terms:

> "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."

7. Where the application for reconsideration is based on new evidence the approach laid down by the Court of Appeal in **Ladd v Marshall 1954 3 All ER 745, CA** will, in most cases, encapsulate what is meant by the "interests of justice". That means that in most cases, in order to justify the reception of fresh evidence, it is necessary to show:

   - that the evidence could not have been obtained with reasonable diligence for use at the original hearing
   - that the evidence is relevant and would probably have had an important influence on the hearing; and
   - that the evidence is apparently credible.

8. The interests of justice might on occasion permit evidence to be adduced where the requirements of **Ladd v Marshall** are not met. (**Outasight** at paras 49-50).

The claimant's reconsideration application

Procedural points

9. The claimant's application was made within 14 days of the parties being sent the Judgment. It was made in time. However, it does not appear to have been copied to the respondent as required by rule 71 of the ET Rules. At the rule 72(1) preliminary stage the Tribunal should not seek any response to the application from the respondent (**TW White and Sons Ltd v White EAT 0022/21**). In those circumstances I consider it just to waive the requirement for the application to be copied to the respondent. I have directed that a copy of the application be sent to the respondent with this Judgment.

The substance of the claimant's application

10. The claimant is a litigant in person. His application for reconsideration (entitled "The Final Version (minor edits)") consists of 3 pages of typed, unnumbered paragraphs. It does not specifically set out why reconsideration would be in the interests of justice. The overriding objective to deal with cases justly and fairly in rule 2 of the ET Rules includes ensuring that the parties are on an equal footing (rule 2(a)).In fairness to the claimant, I have considered whether any of the points he makes in his application would justify the Tribunal reconsidering the Judgment even if he has not specifically explained why that would be so.

11. First, the claimant submits that Mr Bryant and Ms Blake must have known he was a Muslim because his name was Mohammed. We set out our findings and conclusions on that issue at paras 49, 75-76 of our Reasons. Our central finding was that neither in reality gave the claimant's religion any thought in deciding on his application for the role for which he applied. The claimant's reconsideration application repeats his submissions on this point made at the hearing. Those submissions were taken into account in reaching our decision. They do not provide grounds for reconsideration.

12. Second, the claimant submits that the Tribunal was wrong not to take into account additional evidence he provided with his written submissions after the hearing, namely photographs of his place of work. We dealt with this at para 14 of our Reasons. We noted there was no suggestion that the evidence was unavailable before the hearing and no explanation why it had not been included in the bundle for the final hearing. In his reconsideration application, the claimant said that it was difficult for him to retrieve the photos because they were on an old phone and the storage on it was limited. I am not satisfied, particularly given his IT skills, that that satisfies the **Ladd v Marshall** test. It seems to me that the photos could have been obtained for the original hearing with reasonable diligence. In any event, as we made clear in para 14 of our Reasons, our decision would have been the same even had the photos been included in the hearing bundle. It fails the **Ladd v Marshall** test because it would not have had an important influence on the hearing. It would not have altered the Tribunal's central conclusion that the claimant's race or religion did not play a part in the decision not to appoint him to the role he applied for.

13. Third, the claimant says that he proved at the hearing that data conversion is an integral part of Relational Database Management Systems. I understand that to be a submission that the Tribunal was wrong to accept Mr Bryant's evidence that the claimant did not have the relevant qualifications and experience for the role for which he applied. This was a matter dealt with at the hearing. We recorded at para 51 of our Reasons our finding that Mr Bryant's genuine assessment was that the claimant did not fit the bill for the role based on the evidence in his CV and the follow up emails the claimant sent him. The claimant's reconsideration application does not provide grounds for reconsideration. It merely repeats points made at the hearing and taken into account in reaching our decision.

14. Stepping back and taking all the points made by the claimant together, I find there is no reasonable prospect of his application for reconsideration leading to the original decision in the Judgment being varied or revoked and I refuse it under rule 72(1) of the ET Rules.

Employment Judge McDonald
Date: 19 November 2021.

JUDGMENT SENT TO THE PARTIES ON

23 November 2021

FOR THE TRIBUNAL OFFICE