



EMPLOYMENT TRIBUNALS

Claimant: Mr W Crawford

Respondent: ISG Technology Limited

JUDGMENT

The claimant's application dated 29 November 2021 for reconsideration of the judgment made on 19 November 2021 and sent to the parties on 23 November 2021, is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The victimisation claim was struck out on the basis that it had no reasonable prospect of success. That decision was primarily based upon the requirement to have a protected act as part of a victimisation claim; that is the protected act which it is alleged was the reason for the alleged detrimental treatment. At the preliminary hearing the claimant relied upon him informing HR on 26 March 2020 that he might pursue a grievance by asking about the grievance process, as being the protected act upon which he wished to rely. As it was decided that what was said could not have amounted to a protected act, the claimant's claim for victimisation had no reasonable prospect of success.

2. It isn't entirely clear from the application whether the claimant is endeavouring to rely upon the other matters listed as themselves being protected acts, or whether he is contending that the other matters listed support his contention that the request to raise a grievance was a protected act. From the final paragraph of the section under the hearing victimisation it would appear the latter. Whether matters were outstanding at the time the claimant asked HR about the grievance process would not alter the fact that what was asked did not meet the statutory requirements for a protected act.

3. In any event, the claimant was given the opportunity at the preliminary hearing to respond to the respondent's application and to explain both what it was he relied upon as being the protected act or acts, and why he believed that it was (or they were) protected acts. The claimant did not rely upon the matters listed in the reconsideration application as being protected acts at the preliminary hearing (save raising with HR the grievance process).

4. The application of 29 November 2021 does not provide any new information which would result in the decision being reconsidered.

5. The elements of the reconsideration application under the headings wrongful dismissal and unlawful dismissal are not genuinely applications to reconsider the Judgment issued, as the Judgment did not strike out or determine those claims. The wrongful dismissal claim (and the unfair dismissal claim) had been struck out prior to the hearing because the claimant had not complied with an unless order. The claimant's application to set aside the strike out of his claim was considered at the preliminary hearing on 19 November 2021, and the application was refused. In the light of what is said in the reconsideration application I have considered whether that decision should be varied suspended or set aside, but cannot see anything within the application which would mean that it would be in the interests of justice to do so or in accordance with the overriding objective, where the issue was fully considered and determined at the preliminary hearing. I don't understand what exactly is sought by the claimant under the heading unlawful dismissal, but in the event that addresses the decision not to set aside the strike out of the unfair dismissal claim, nothing in what is said appears to suggest that the claimant had the length of service required.

6. 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). The Court of Appeal in **Ministry of Justice v Burton [2016] EWCA Civ 714** has emphasised the importance of finality, which militates against the discretion being exercised too readily.

7. Rule 72(1) of the 2013 Rules of Procedure empower me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

8. 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.

9. For the reasons I have explained, the application for reconsideration is refused.

Case No: 2408912/2020

17 December 2021

JUDGMENT SENT TO THE PARTIES ON

23 December 2021

FOR THE TRIBUNAL OFFICE