



EMPLOYMENT TRIBUNALS

Claimant: Mr A E Mbeng Obi

Respondent: Vodafone Ltd.

2207858/20

Judgment on reconsideration application

The Claimants' application dated 14 December 2021 for reconsideration of the Judgment sent to the parties on 30 November 2021 is refused.

REASONS

1 I must, first, deal with the third to fifth paragraphs of the Claimant's application.

"The Claimant was not given the opportunity to properly consider the issue of direct and indirect discrimination, given the unusual facts of this claim. The Claimant was placed in a difficult position by the presiding judge indicating the claimant should choose one or the other in the absence of proper direction.

Notwithstanding, there are no rules that a claim can only be brought on a single ground. Therefore, it was not in the interest of justice to have done so. Also, the claimant haven't studied law does not make him an expert in law. Law students do not become experts in law, particularly prior to their call to the bar/admission ceremony. In the interest of justice and a fair trial, they should be afforded the right to proper representation and directions.

Thus, after receiving legal advice the Claimant submit that his claim should be considered for both direct and indirect discrimination as it would be in the interest of justice to do."

2 At the outset of the hearing I confirmed with the Claimant that he relied on direct discrimination and, in our short discussion, I asked if he claimed indirect discrimination. He replied with clarity that he did not. This came as no surprise and the hearing continued.

3 The reason his response was unsurprising is as follows. When he attended the earlier preliminary hearing, he told EJ Spencer that it was a claim of direct discrimination and the first words of her record are: "This is a claim of direct

discrimination.” The amendment to the ET3 that was subsequently filed dealt only with that claim. The application for strike out of 7 October 2021 stated: “The claim is one of direct discrimination.” That was the sole subject of the application. At no point in either the pleadings or at any hearing, including the hearing of the application, did the Claimant either (a) mention indirect discrimination or (b) raise any argument that suggested he was making that claim.

4 I consider the Claimant to be wrong in suggesting that I asked him to “choose one or the other.” Had I done so, I would imagine the Respondent may well have protested. It would also have courted an immediate adjournment while the question of amendment was considered; and, if granted, quite possibly a further adjournment, if the Claimant was trying to raise both claims. None of this happened or was even contemplated. All that happened, in my recollection, is that the Claimant confirmed, in answer to my question, that he was claiming direct discrimination, as he had always made plain in hearings.

5 I further note that his application now suggests that he has *subsequently* taken legal advice and has decided to raise indirect discrimination.

6 I have carefully considered the points raised in the remainder of the application and these are similar to, or expansions upon, those the Claimant raised at the hearing. They are matters that may be apt for an appeal, but they do not deal with the fundamental reasoning that I set out in my decision. I would also note that Ahir was not a case I thought had any real bearing for my decision. It was illustrative only.

7 I would note for the parties that in paragraph 2 of the decision, the word ‘selected’ is underlined and in bold. This was a formatting error and I will be asking the staff to formally inform them that the on-line judgment will be replaced with a version where this word appears in normal font. No emphasis was intended or originally typed.

7 Rule 72 provides that: “If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked ... the application shall be refused ...” I see no reasonable prospect of my decision being revoked in this case as the essential basis for my judgment stands. I therefore refuse the application in accordance with rule 72.

Employment Judge Pearl

Date: 11/01/2022

JUDGMENT SENT TO THE PARTIES ON

11/01/2022.