



EMPLOYMENT TRIBUNALS

Claimant: Mr. P Omorogbe

Respondent: Mr R. Wegiel and Miss M Axante t/a Julia's Removals

JUDGMENT- RECONSIDERATION

The respondents' application dated for reconsideration of the judgment sent to the parties on 16 November 2021 is refused.

REASONS

1. I have undertaken preliminary consideration of the respondents' application for reconsideration of the judgment in favour of the claimant. The grounds for the application are in an attachment to an email from the respondent to the Tribunal dated 29 November 2021.

2. By email dated 12 November 2021, the respondent also requested written reasons in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, which were sent to the parties on 20 December 2021.

The Law

3. 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).

4. 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.

5. 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."

6. 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."

7. 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

8. The respondents did not attend the final hearing in this case. They only informed the Tribunal that they would not be attending on the evening before the final hearing and asked for the hearing to be postponed. In their application for reconsideration, the respondents further explain their non-attendance.

9. As is clear from the judgment, the reasons for non-attendance provided on the evening before the hearing were considered at the beginning of the hearing. I reached my decision not to postpone the hearing on the basis of the information provided and I have explained my reasons for this decision.

10. The respondents have now provided additional information explaining their non-attendance, particularly in the form of letters from an NHS community mental health team. One of the respondents has been under the care of this team. The respondents could have provided copy letters in advance of the final hearing had they wanted them to be taken in to account. They did not. The respondents also had an opportunity at an earlier (Preliminary) hearing to raise difficulties in attending a hearing due to medical reasons but did not do so. As for the 3 letters provided, I note:

- a. 2 of these pre-date the final hearing by more than a year
- b. The remaining letter post-dates the final hearing and simply confirms attendance at one appointment and makes arrangements for another appointment

11. In the circumstances the letters provided are not relevant to the application to postpone. Had the respondents provided these letters when requesting a postponement, they would not have changed my decision.

Conclusion

Having considered the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Employment Judge Leach
DATE: 27 January 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
31 January 2022

FOR THE TRIBUNAL OFFICE