**Case No: 2402124/19**
**2404795/19**

# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Cox

**Respondent:** Lancashire County Council

# JUDGMENT

The claimant's application dated 12 December 2021 for reconsideration of the judgment sent to the parties on 7 October 2021 (with written reasons sent on 29 November 2021) is refused.

# REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the Remedy Judgment relating to the award made under section 10 Employment Relations Act 1999. That application is contained in an email dated 12 December 2021. I have also considered comments from the respondent dated 17 December 2021. References in square brackets (e.g. [25]) are references to paragraph numbers from the written reasons promulgated on 29 November 2021.

2. I want to apologise to both parties for the delay in dealing with this application, which is due to a backlog in email correspondence being referred to Employment Judges at the present time.

**The Law**

2. 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).

3. 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.

4. 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."**

5. 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."**

6. 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

7. In his application, the claimant attempts to re-open the Tribunal's determination that it was appropriate to award only nominal damages for the section 10 breaches for the reasons that are set out in paragraph [17].

8. At the hearing, the claimant was represented by counsel, and counsel for both sides put forward arguments as to the appropriate level of award.

9. This application represents an attempt to have a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. I do not consider that either of these principles are engaged on the facts of this case.

10. Specifically, the application makes reference to the first instance case of **Martinez v Abellio London Ltd 2301532/2018V**. There is no explanation given as to why this decision could not have been referred to during the remedy hearing. More fundamentally, however, the decision does not address the reason why the Tribunal in this case awarded nominal damages – namely the overlap between the section 10 case and the disability discrimination case and the Tribunal's concern to guard against double recovery.

## Conclusion

11. Having considered all the points made by the claimant I am satisfied that

there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Dunlop

DATE 27 January 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

1 February 2022

FOR THE TRIBUNAL OFFICE