Case No: 1305972/2020

EMPLOYMENT TRIBUNALS

Claimant: Mr M Khan

Respondent: Professional Pizza Company Ltd

UPON APPLICATION by the Claimant made by an email dated 4 February 2022 (supplemented by a further email dated 6 February 2022) to reconsider the judgment sent to the parties on 24 January 2022 (a Corrected Judgment having been sent to the parties on 26 January 2022), under rule 71 of the Employment Tribunals Rules of Procedure 2013,

JUDGMENT

The Claimant's application for reconsideration is refused on the basis that there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Background

1. The Claimant's application for reconsideration of the Judgment and Reasons sent to the parties on 24 January 2022, as corrected by the further Judgment and Reasons sent to the parties on 26 January 2022, was plainly made within the 14-day time limit set by rule 71 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules").

2. In accordance with rule 72(1) of the Rules, the first step was for me to consider the Claimant's application, to determine whether there is any reasonable prospect of the original decision being varied or revoked.

3. In accordance with rule 72(1) of the Rules, this decision is mine alone. It would only have been had the application not been refused at this first stage that I would have consulted my colleagues, Mrs Bannister and Mr Forward. I should make clear however, that of course the original Judgment to which the Claimant's application relates was a unanimous judgment of all three Tribunal members.

4. As indicated above, under rule 72(1) the first task is for me to decide whether there is any reasonable prospect of the original decision being varied or revoked. I have decided that there is not, for the reasons set out below, taking matters essentially in the order adopted by the Claimant, although where the Claimant refers to the same point more than once within his emails, I have dealt with it only once rather than repeating the same conclusions.

5. In reaching my conclusion, I have borne in mind that a judgment should be reconsidered where it is in the interests of justice to do so. That is a deliberately wide test, though typically reconsideration would take place where a party introduces new evidence (that could not reasonably have been made available at the original Hearing), is able to identify some procedural irregularity in the way in which that Hearing was conducted or is otherwise able to identify an obvious error in the Tribunal's conclusions. Of course, that is not a complete list of what might be in the interests of justice. Reconsideration will rarely be appropriate however where a party is seeking to re-argue points that were fully aired at the original hearing or to raise points that could reasonably have been raised first time around. This arises from the principle that the interests of justice must have regard to the position of the other party in the case, the Respondent in this instance, and to the general importance of finality in litigation.

The Claimant's application

6. I now deal with the Claimant's points in turn. Where I refer to paragraph numbers below, those are references to paragraphs within the original Reasons and the Corrected Reasons (there were no paragraph number differences between them) unless otherwise stated.

7. The Claimant refers on several occasions in his application to "bias" on the part of the Tribunal. At no point during the Hearing did the Claimant say anything which gave the slightest indication that he considered there to be bias at play. I do not recall anything that occurred during the Hearing at any point that could properly be said to give rise to any such suggestion and his emails provide no basis for his assertion.

8. The Claimant refers to the decision of Employment Judge Coghlin at the Preliminary Hearing in this case. There are two points to highlight. First, it is not correct that EJ Coghlin "outlined a whole page of matters he considered to be race or religion or belief discrimination" as the Claimant asserts. What the Claimant refers to is simply EJ Coghlin's list of the issues to be determined at the Final Hearing. Secondly, whilst it is correct that in respect of the complaints which gave rise to that list, EJ Coghlin did not order the Claimant to pay a deposit, the following is clear:

8.1. There were no written reasons before this Tribunal setting out the basis for EJ Coghlin's judgment in that regard.

8.2. Of course, EJ Coghlin's decision and reasons would not have been binding on this Tribunal.

8.3. That it because in any event he would have been operating within the normal constraints of a preliminary hearing, meaning that he would not have had available for consideration all of the documentary and oral evidence presented to us. He

would have been very careful to avoid conducting a trial on the evidence at that stage and indeed aware that he could not have done so.

9. What we concluded the Claimant said to Mr Wasti about the legal proceedings the Claimant was involved in was clearly set out at paragraphs 30 to 37, in particular paragraphs 32, 33 and 37, with clear reasons given for our conclusions. In this respect, the Claimant simply rehearses points he made at the Hearing. The Reasons overall make clear that all the material points made by the Claimant were properly considered.

10. It was agreed that the Claimant did not share with the Respondent his online conversation with Chris Sharpe, prior to his dismissal – see paragraph 100.1. It was therefore of very little relevance to the issues before us.

11. The Claimant's point about safeguarding was fully aired at the Hearing and dealt with expressly at paragraph 100.4.

12. It is correct that we rejected Ms Jordan's evidence that she had spoken to the Claimant, in accordance with her usual practice, to provide him with a summary of the reasons for his dismissal. This is dealt with at paragraph 100.5, in which we explained why our rejection of her evidence in this respect was not sufficient in our judgment to draw an inference of discrimination. As that paragraph says, there were many aspects of the Claimant's evidence which we also rejected as unreliable, as can be seen at various points in the Reasons. We were content, as stated at paragraph 100.5, that Ms Jordan did not deliberately mislead us in this (or any other) respect, any more than the Claimant did so in the evidence that we rejected from him. Our conclusion wherever we rejected the evidence of any witness was that the recollection of the witness – in this case Ms Jordan saying that she had done what she would always do in the case of a dismissal – was not accurate. We plainly did not find that she "deliberately conveyed lies" as the Claimant alleges.

13. It should further be noted that the Claimant at no point put to the Tribunal, whether in cross-examination of Ms Jordan, or in submissions, that we should conclude on the basis of her inaccurate evidence in this respect that she had discriminated against him. He simply asserted that she, along with Mr Wasti and Mr Cronin, were telling lies. Indeed, he did not put to Ms Jordan at any point that she had discriminated against him.

14. In respect of Employee P, as we made clear at paragraph 51, both Ms Jordan and Mr Cronin (the latter having been directly involved in the relevant events) saw his behaviour as a welfare issue. We set out at paragraph 90 why Cody Reynolds' evidence in relation to Employee P was of little or no value to the Tribunal, and at paragraphs 90 and 91 why Employee P was plainly not an appropriate comparator for the Claimant. In similar vein, we set out at paragraph 95 our reasons for concluding that Chris Sharpe was not an appropriate comparator, and at paragraph 94 why we reached the same conclusion in relation to the driver in Yeovil. The Claimant asserts that the Tribunal was dishonest in its conclusions in relation to the driver in Yeovil: I do not understand that assertion and he does not explain it or provide any evidence to support it.

15. We expressly acknowledged at paragraph 43 that Ms Jordan did not mention the subsidiary reasons for dismissal in her witness statement. It should be noted

however that:

15.1. Mr Wasti at paragraph 20 of his statement referred to "the above-mentioned incidents" as leading to the decision to dismiss, apparently therefore including the "diet coke incident" he referred to at paragraphs 3 and 6 of his statement.

15.2. Both he and Mr Cronin said in unchallenged oral evidence that Ms Jordan spoke with them about these other issues prior to the Claimant's dismissal.

16. In respect of Ms Jordan's decision not to reply to the Claimant's correspondence of 27 May 2020, whilst it is noted that at paragraph 13 of her statement that she said it was "in June 2020" that the store received calls from the Claimant and a third party on his behalf, the relevant factual context on which we based our conclusions in this respect is set out at paragraphs 56 and 57. Those findings of fact emerged from the documents quoted within those paragraphs and from the oral evidence of Ms Jordan in answer to a question from the Tribunal. The Claimant was given an opportunity to engage in further cross-examination of Ms Jordan immediately after the Tribunal's question. Whilst he picked up another, unrelated point, he did not seek to challenge her evidence in this respect at all. The conclusions at paragraphs 106 to 108 followed on from those factual findings.

17. The Tribunal did not ignore the question of when the Respondent put in writing that the lower-level conduct was taken into account in deciding to dismiss the Claimant. This was expressly addressed at paragraph 100.3.

18. The Tribunal did not see the relevance of the Claimant's point, made at the Hearing several times as well as in his reconsideration application, regarding the amendment of his Claim. Furthermore, Tribunals are not required to deal with every point raised during a Hearing. It is clear to me that the Reasons address all of the Claimant's main arguments.

19. The Claimant did not rely on his "general Muslim faith" as part of his case that he had been discriminated against in relation to his dismissal. In answer to a question from the Tribunal he stated, "I was dismissed because I am a Muslim Scientist", that is because of his scientific beliefs related to his Muslim religion. That was a departure from what had been agreed with EJ Coghlin, but the Respondent was content to proceed on this revised basis once the Claimant had made his position clear in this way.

20. The Claimant emphatically did not rely on any argument relating to "profiling", assuming by that he means that the Respondent made stereotypical assumptions about his involvement in a criminal matter because of his race (or religion and belief). See paragraph 81.6.

21. Finally, the Tribunal did not say at paragraph 93 that the Claimant is a risk to other people. The Corrected Judgment and Reasons were issued in part to make that explicit.

Conclusion

22. For the reasons set out above, I see no reasonable prospect of the Tribunal changing the decision it has already reached in relation to the Claimant's complaints. Fundamentally, whilst he plainly disagrees with the judgment and the

reasons behind it, he is seeking to re-argue points already fully addressed and, in one or two instances, to argue points that he could properly have put before us at the Final Hearing. Otherwise, he makes bold assertions about the Tribunal's conclusions, but without any evidence to support them. Accordingly, nothing the Claimant says sets out any reasonable ground on which the Tribunal could arrive at different findings of fact or reach different overall conclusions in respect of his complaints of discrimination.

23. The Claimant's application for reconsideration is therefore refused.

Employment Judge Faulkner
15 February 2022