

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4100924/2016

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Employment Judge: J D Young
Members: Mrs P McColl
Mr J O'Donnell

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Mr Alan Cotton

Claimant

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Chief Constable Of The Police Service of Scotland

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Respondents
Represented by:
Mr A Gibson -
Solicitor

RECONSIDERATION JUDGMENT

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On reconsideration the decision of the Employment Tribunal is that the Judgment dated 14 September 2017 is confirmed.

REASONS

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1. In this case a Judgment dated 14 September 2017 was issued by the Employment Tribunal. By application of 27 September 2017 the claimant sought reconsideration of that Judgment on grounds set out in a paper accompanying the application for reconsideration.

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2. That application for reconsideration was not refused in terms of Rule 72(1) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Tribunal Rules of Procedure") but a notice

sent to parties setting a time limit for any response to the application by the respondents and seeking the views of the parties on whether the application could be determined without a hearing.

5 3. The respondents made a response to the application in terms of a response dated 24 October 2017. Thereafter in terms of Rule 72(2) of the Tribunal Rules of Procedure it was decided that a hearing was not necessary in the interests of justice and the reconsideration could proceed without a hearing. By letter of 7 November 2017 The parties were then given an opportunity to
10 make further written representations by 17 November 2017. No further representations were made.

4. In the application presented by the claimant distinct points were made on the Judgment which are answered below:-

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5. **Page 6 - Paragraph 11 of Judgment**

It is stated by the claimant that there was an error in narrating his career history at paragraph 11 of the Judgment. The narration is in accordance with
20 the note taken of the claimant's evidence on the first day of hearing. It is accepted that the narration may not have been accurate as against the actual background of service but the Tribunal did not consider it made any difference to the approach that they took to the main issues or to the seriousness with which they considered the claimant's evidence.

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6. **Page 19 - Paragraph 45 of Judgment**

Paragraphs 45 and 46 of the Judgment deal with the evidence of Peter Blair on deployment issues. Contrary to the assertion made by the claimant it is
30 not the case that the Tribunal relied on his evidence to determine whether the information given by the Counter Corruption Unit (CCU) was prejudiced. The Tribunal agree that Mr Blair would not know that. His position was that his officers spoke with CCU and received information from them. There was no written record of what passed in that discussion. The Tribunal did not rely on
35 any representation by Peter Blair that the information that CCU was not

prejudiced. The Tribunal explained their position at paragraphs 175/179 of the Judgment in relation to this matter in respect of the evidence received and in the context of the events which took place.

5 7. **Page 21 - Paragraph 55 of Judgment**

This section dealt with the application by the claimant for external business interest.

10 The claimant states that at a meeting of 22 February 2016 the witness Gibson was asked who had decided to carry out due diligence into the application for secondary business interest and that Mr Gibson indicated that was "PSD" (Police Standards Department). It is the case that was said by Mr Gibson and that he also indicated that he thought the reason that due diligence would
15 be conducted would be because the proposed secondary business interest would be involved in estate agency. He also indicated that he had told PSD that the claimant would not be involved in renting. However the Tribunal were well aware that CCU had made representation about the application for secondary business interest. The Tribunal was equally clear that at the end
20 of the day Mr Gibson made the decision on the application by the claimant and it was not one which was taken by either CCU or PSD. They were satisfied that Mr Gibson dealt with the matter "conscientiously and objectively" as stated at paragraph 181 of the Judgment.

25 8. **Page 29 - Paragraph 76 of the Judgment**

The claimant was clear in his evidence to the Tribunal that he had not been told on a telephone call why a meeting had been called with him and subsequent to which he resigned. The evidence from Mr West was that he
30 had been told by Cliff Neil (who had telephoned the claimant) that the claimant was told the meeting would be about misconduct. However the Tribunal took the position in accordance with the claimants own evidence that he did not know what the meeting was about and assessed the position on that basis. The Tribunal have not preferred Mr West's evidence but made

a determination based on the claimant's own evidence that he made a decision to resign without knowing what it was that the respondent wished to discuss at the proposed meeting. That position is made clear at paragraph 232 of the Judgment.

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9. Page 25 - Paragraph 78 to Page 36 - Paragraph 98 of the Judgment

At this part of the application the claimant makes the assertion that in the findings in this section of the Judgment the Tribunal make some "fundamental errors both in understanding and in the correct terminology necessary to do so".

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It is stated that the reference to "Standard Police Report" has no meaning and that it should be "Standard Prosecution Report".

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The Tribunal were not confused about the issue raised by the claimant. In his evidence it was his consistent complaint that the "CCU saw fit to present a falsely positioned Police Report against me. I say that the report was made as a result of the protected disclosures, 1, 2 and 3 - that is documents number 8 at pages 28 - 52 of the claimant's bundle." In essence the Tribunal adopted the claimant's own terminology in describing the report which was presented to the Procurator Fiscal as a "Police Report". He gave no evidence that there was any other report at issue. His position was that as soon as he complained then the CCU "made sure that the Police Report was prejudiced". In his examination of his witnesses the claimant referred to the "Police Report" or the "Bassano Report".

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10. There was a clear conflict in the position of the claimant and of Ms Bassano. The claimant's position was that it was "impossible" for the Police Report to have been sent to the CAP Unit in Glasgow in January 2011 but that it was sent in February/March 2012. The Tribunal gave anxious consideration to that conflict and made a determination that it was delivered in January 2011. They made that determination for the reasons outlined in the Judgment.

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11. There was no confusion in the mind of the Tribunal as to the report believed by the claimant to have been delivered in February/March 2012 on account of his protected disclosures. The papers which formed that report were considered in some detail over the course of the hearing.

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12. It is the case that the witnesses Sallens, Reid and Daly gave evidence to point out what they considered were defects in the report. The Tribunal considered that evidence against their understanding of the reference numbers attached to that report and subsequent complaint. These witnesses were critical of the role of CCU within the respondents. They believed that the CCU would act in a prejudicial way towards anyone who had been a "whistleblower". However none of them gave evidence that they had worked within that Unit or had knowledge of the way in which reports were taken from the Unit to CAP Unit. Neither do the notes of evidence suggest that they had been involved in several complaints against the Police. These witnesses were referred to the "Standard Police Report" by the claimant and raised no issue as to the terminology being used by the claimant.

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13. It is stated by the claimant in this section of his application that "at paragraph 89 the Tribunal accept Wit Bassano's further explanation of why the system of hand delivery was adopted. This position is false." He then goes on to advise that a "Criminal History Search" (CHS) record is created by the submission of an electronic E3: 20: 1 which is then processed independently by Criminal Justice Information services (formerly Scottish Criminal Records office)" There was no reference to or any evidence given at the hearing that a "CHS record" would be created; or any reference to or evidence given regarding a "form E3: 20: 1 being processed". This was an issue never put to any of the witnesses. It is new information as far as the Tribunal is concerned and can play no part in the Judgment.

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14. Additionally the claimant advises that his position is that the witness Bassano would have submitted "probably several but at least two reports in compliance with the 14 day and 10 week LA guidelines to the APF Lorna Revie". That

was also never mentioned by the claimant in his own evidence or canvassed with any other witness including, crucially, Ms Bassano.

5 15. As was indicated in the response to the application for the respondent there was no doubt about the position of the claimant namely that the report had been submitted in February/March 2012. However the respondents' position was that it had been submitted in January 2011. The Tribunal's duty was to assess those conflicting positions and make a determination which they did looking to the evidence available at the hearing.

10 16. That evidence did not include that any further investigation included a further 26 witnesses in respect of the intended prosecution. The Tribunal did know from the evidence that the Procurator Fiscal in October 2011 sought statements from two Officers.

15 **Constructive Dismissal**

20 17. The claimant seeks to advise that given the disadvantage he suffered the only possible conclusion for the Tribunal to reach was that he was unfairly (constructively) dismissed. The Tribunal have set out their reasons why they consider that claim does not succeed and see nothing in the Reconsideration application which would alter that view.

25 18. For all those reasons the Tribunal see no ground to vary or revoke the Judgment which is confirmed.

30 Employment Judge: Jim Young
Date of Judgment: 28 November 2017
Entered in register: 30 November 2017
and copied to parties