



EMPLOYMENT TRIBUNALS

Claimant: Mr P Hodgson

Respondent: Oil Consultants Ltd

JUDGMENT

The claimant's application dated 28 December 2021 for reconsideration of the judgment of the Tribunal that was sent to the parties on 14 December 2021 is refused.

REASONS

1. The tribunal's Judgment in this matter was sent to the parties on 14 December 2021. The unanimous judgment of the Tribunal was that:
 - 1.1. The claimant's complaints that the respondent contravened section 47B of the Employment Rights Act 1996 by subjecting him to detriments on the ground that he made a protected disclosure are not well founded and are dismissed.
 - 1.2. The claimant's complaint that his dismissal was unfair by virtue of s103A of the Employment Rights Act 1996 is not well founded.
 - 1.3. The claimant's complaint that his dismissal was unfair by virtue of s98 of the Employment Rights Act 1996 is well founded.
 - 1.4. The claimant's complaint that the respondent made unauthorised deductions from wages and breached his contract of employment is well founded.

2. By an email dated 28 December 2021, the claimant applied for a reconsideration of the judgment. On 21 January 2022, I directed the claimant to say which of the Tribunal's decisions he is asking to be reconsidered. The claimant's response was that he is applying for a reconsideration of the decisions I have set out at paragraphs 1.1 and 1.2 above.
3. A tribunal has power to reconsider any judgment where it is necessary in the interests of justice to do so: Rule 70.
4. The claimant's application for a reconsideration under r 71 must first be considered by me as the judge who chaired the full tribunal which made it. If I consider there is no reasonable prospect of the original decision being varied or revoked, I must refuse the application. If I consider that there is some reasonable prospect of the original decision being varied or revoked I must seek a response from the respondent and seek the views of the parties on whether the matter can be determined without a hearing. The application is then to be determined by the full tribunal, whether it is dealt with at a hearing or on the papers.
5. In deciding whether it is necessary to reconsider a judgment in the interests of justice, the tribunal must seek to give effect to the overriding objective to deal with cases fairly and justly. That includes taking into account established principles. Those established principles mean the tribunal must have regard not just to the interests of the party seeking the review, but also to the fact that a successful party should in general be entitled to regard a tribunal's decision on a substantive issue as final and to the public interest requirement that there should, as far as possible, be finality of litigation. As the court stressed in *Flint v Eastern Electricity Board* [1975] IRLR 277, QBD 'it is very much in the interests of the general public that proceedings of this kind should be as final as possible.'
6. As Simler P said in *Liddington v 2Gether NHS Foundation Trust* UAEAT/0002/16/DA:

"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 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. Tribunals have a wide discretion whether or not to order reconsideration."
7. The claimant is seeking to rely on new evidence. Where it is sought to persuade a tribunal, in the interests of justice, to reconsider its judgment on

the basis of new evidence the test set out in Ladd v Marshall applies.

Normally that means showing:

- (a) that the evidence could not have been obtained with reasonable diligence for use at the original hearing;
- (b) that it is relevant and would probably have had an important influence on the hearing; and
- (c) that it is apparently credible.

8. At paragraph 29 of his lengthy grounds of application, the claimant identifies certain documents that, he says, the respondent 'concealed from the tribunal' and says why he considers them to be relevant. He says Mr Ramplin gave him copies of those documents after the final hearing but before the tribunal promulgated its judgment. Mr Ramplin is the group finance director for the group of companies that includes the respondent. I ordered the claimant to say when he learned of the contents of the documents and when they came into his possession. The claimant has been no more specific than saying that he learned of the contents of the documents and received copies 'during or shortly after' a conversation he had with Mr Ramplin 'subsequent to the Hearing.'
9. Taking the claimant's case at its highest, the claimant does not have any reasonable prospect of persuading the tribunal that the additional evidence he now seeks to put forward would have had an important influence on the hearing. Addressing specific submissions made by the claimant as to the relevance of certain documents I make the following observations.
 - 9.1. There is nothing in the documents that would have influenced the tribunal's decision that what the claimant said to Ms Smith on 3 March 2020 did not contain sufficient factual content and specificity capable of being a qualifying disclosure.
 - 9.2. The claimant seems to be under the mistaken impression that the tribunal decided that what the claimant said about tax to Mr Ramplin (the second alleged protected disclosure) and to Ms Smith and Ms Walker (the third alleged protected disclosure) were not protected disclosures. That was not a conclusion reached by the tribunal. It was unnecessary to decide that point given the other findings made.
 - 9.3. The claimant appears to be suggesting that some of the additional evidence undermines the respondent's credibility generally and, more specifically, that of Ms Smith. Having considered those documents, I am of the view that the claimant has no reasonable prospect of persuading the tribunal that the additional evidence he now seeks to put forward would have had an important influence on the hearing.
 - 9.4. Some of the documents concern matters that were not relevant to the issues that the tribunal had to decide, including documents concerning facilitation payments and documents concerning the identity of the Data Protection Officer.

10. Furthermore, the claimant has not explained why he did not ask the tribunal to consider the evidence he now seeks to rely on before its decision was promulgated. If the claimant thought the evidence would probably have an important influence on the tribunal's decision he could have applied to admit that evidence (and recall witnesses) but he did not do so.
11. The claimant also makes the following allegation in his application for reconsideration:

'On the evening of 16 September 2021, while Ms Smith was still on the stand and subject to Judicial Warning given by EJ Aspden, it has come to light that Ms Smith called both Mr Johnson, the respondent's solicitor, and Mr Ramplin, respondents Finance Director and also a witness. During these conversations she discussed the case notably in two subjects.

- '1. Ms Smith discussed the questioning relating to her husband's employment noting that her answers to cross-examination would become public record and that the other employees of the respondent would find out about him.*
- 2. Ms Smith discussed the matter of concealment of disclosure in relation to document "2.5. FW: Meeting 11-03-2020". Mr Ramplin stated to me that there was discussion regards to documents we now know the tribunal had been led to believe do not exist as per para 24 of this document. These same documents were shared by email to Ms Smith upon the adjournment for the evening of 16 September 2021.'*

12. On 21 January 2022, I directed the claimant to say:

- 12.1. why he believed Ms Smith spoke to others at that time; and
- 12.2. if someone told the claimant that Ms Smith spoke to others, who told him and when did they tell him.

13. The claimant's response, in as far as it is relevant to this allegation, was as follows:

'Subsequent to the Hearing, Mr Ramplin (respondent's Finance Director) contacted me by phone and by whatsapp messenger (screenshot attached in bundle). During these conversations/correspondence, ...Mr Ramplin distanced himself from the actions of the Respondent by stating the following...Ms Smith contacted him on the evening 16 September 2021 (whilst still on the stand). She stated she was worried that facts surrounding the case would be published and asked for clarification as to a line of questioning regarding a document that the respondent's solicitor had claimed couldn't be found. Mr Ramplin sent Ms Smith an email attaching/forwarding a document that had been concealed which would demonstrate this.'

14. In his response to my Order the claimant did not explain why he believed Ms Smith also spoke to Mr Johnston, the respondent's solicitor on the evening of 16 September. Nevertheless, in considering the claimant's application at this stage, I take the claimant's allegations at their highest, assuming they accurately reflect what happened.
15. Although it concerns me that Ms Smith may have spoken to others whilst in the process of giving evidence, based on what the claimant says was discussed, there does not appear to be anything in the grounds advanced by the claimant that could lead the tribunal to vary or revoke its decision. The matters allegedly discussed are not matters that would probably have had an important influence on the hearing.
16. The basis of the claimant's application, in essence, is that he disagrees with the tribunal's assessment of the evidence, and in particular the credibility of Ms Smith, and he is seeking to reargue his case. The claimant was ably represented by Mr Rahman of counsel at the hearing. The points made now by Mr Hodgson are substantially the same as those made by Mr Rahman at the hearing (and/or by Mr Hodgson himself in his evidence) and which, to the extent we considered them relevant, we took into account when reaching our decision. The claimant is of course entitled to disagree with the tribunal's assessment of the evidence. That is not a proper basis on which to overturn the judgment, however.
17. There is nothing in the grounds advanced by the claimant that could lead the tribunal to vary or revoke its decision. I consider there is no reasonable prospect of the original decision being varied or revoked. It follows that I must refuse the application.
18. I note, in any event, that there is a further obstacle to the claimant's application to reconsider the decision that the claimant's complaint that his dismissal was unfair by virtue of s103A of the Employment Rights Act 1996 is not well founded. The claimant's complaint relying on s103A ERA 1996 could only succeed if the tribunal were to find that the only, or the main, reason for dismissal was that the claimant made a protected disclosure. Such a finding would be inconsistent with the findings of fact made by the tribunal in deciding that the claimant was unfairly dismissed by virtue of s98 of the Employment Rights Act 1996, specifically the finding that the reason for the claimant's dismissal was redundancy. Neither party has applied for that decision to be reconsidered. That being the case, the claimant's application to reconsider the complaint of automatic unfair dismissal must be destined to fail in any event.

Employment Judge Aspden

Date 1 March 2022