



EMPLOYMENT TRIBUNALS

Claimant: Mr A Hadi Al Hassany

Respondents: 1. Somerset NHS Foundation Trust (Formerly Taunton and Somerset NHS Foundation Trust)

2. Edward Herbert

Heard at: Bristol (decision on papers in Chambers)

Before: Employment Judge Midgley

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant's application for reconsideration is refused because there is no reasonable prospect of the claimant demonstrating that it is in the interests of justice for the decision to be varied or revoked.

REASONS

1. The claimant has applied for a reconsideration of the Judgment dated 23 February 2022 which was sent to the parties the same day ("the Judgment"). The grounds of the application are contained in an email of 6 March 2023.
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 ("the Rules"). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time.

3. The grounds for reconsideration are only those set out in Rule 70, namely that it is in the interests of justice to vary or revoke the Judgment.
4. The grounds relied upon by the claimant are slightly difficult to identify, given they are merged with a narrative account of the background facts and the claimant's commentary upon those events. However, I understand the fundamental arguments to be as follows:
 - a. the decision to dismiss was made without consideration of the arguments contained in an email sent to the Tribunal at 09:40 on 23 February 2022 which developed the claimant's case that the respondent had acted in contempt of court in the producing a misleading or inaccurate response to his claims.
 - b. The claimant had applied for the response to be struck out pursuant to rule 37 on the grounds of that contempt; which had not been sufficiently considered before deciding to dismiss the claim.
 - c. The Tribunal Rules do not preclude consideration of an application for a contempt of court.
5. Each of those arguments had been considered before the Judgment dismissing the claim was issued. They are misconceived. The first because the argument was considered; the dismissal judgment was drafted in the afternoon of the 23 February 2022.
6. The second and third were equally misconceived, because the question to be determined in accordance with rule 52 was whether the Tribunal was satisfied that there would be legitimate reason for not dismissing the claim or that to issue such a judgment would not have been in the interests of justice. The fact that the claimant sought to apply under rule 37 for the response to be struck out on the ground of contempt of court, or to make a separate application for contempt of court (which the Tribunal has no jurisdiction to hear), in respect of a case where he had withdrawn his claim, neither provided a legitimate reason, nor demonstrated that it would not be in the interests of justice to deviate from the standard practice of dismissing the claims. It was not in the interests of justice because allowing the claimant to preserve proceedings with the intention of permitting an application to strike out a response, where he had withdrawn his claim, would not accord with the overriding objective in rule 2, nor would it provide for finality of litigation. Conversely, it would be tantamount to an abuse of the Tribunal's process.
7. In any event, all those grounds were raised to a greater or lesser extent in the claimant's written arguments which were considered before issuing the Judgment.

8. In so far as the application entreats me to reconsider and review my decision on matters of fact or arguments which I have previously determined, the Employment Appeal Tribunal (“the EAT”) in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review does not mean “that in every case where a litigant is unsuccessful, he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order”.
9. There was no denial of natural justice in this case; rather I considered the evidence and the claimant’s arguments and determined that the claim should be dismissed following its withdrawal notwithstanding that was contrary to the claimant’s expressed wishes. That is the usual process of a Tribunal where a claim is withdrawn.
10. Accordingly, I dismiss the application for reconsideration pursuant to Rule 72(1) because there is not reasonable prospect of the claimant demonstrating that it is in the interest of justice for the Judgment to be varied or revoked.

Employment Judge Midgley
Date: 25 March 2022

Judgment sent to parties: 11 April 2022

FOR THE TRIBUNAL OFFICE