Case No: 2415673/20

EMPLOYMENT TRIBUNALS

Claimant: **Mr J Pilling**

Respondent: **ICSkills.com Limited**

JUDGMENT

The claimant's application dated 23 March 2022 for reconsideration of the judgment sent to the parties on 15 February 2022, with written reasons sent to the parties on 17 March 2022 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims.

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. The majority of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. In that sense they represent 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. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

8. That broad principle disposes of almost all the points made by the claimant. However, there are some points he makes which should be addressed specifically.

9. The claimant states that he never agreed to postpone the start date. The contract of employment stated the start date was 23 March 2020, however the email dated: 18 February 2020 the claimant asked for the start date to be postponed to 30 March 2020. Prior to the 30 March 2020 there were numerous emails exchanged between the parties regarding the start date.

10. On 24 March 2020 to Ian Dixon the claimant asks" *Does that mean I wont be an employee of ICSkills until we agree a new start date?"* to which the respondent replied "…*we would need to agree a new start date. It would not be possible for you to start owing to the present circumstances.*" The nationwide covid lockdown began on 23 March 2020.

11. On 17 April the claimant asks in an email to Ian Dixon "Are *we still watching the lockdown news closely to arrange a new start date?* "These emails together with the oral evidence given by the claimant during the hearing demonstrate that the claimant was aware that no agreement had been reached regarding a start date ie they had agreed to postponement of the start date for the claimant to commence employment as an employee of the respondent.

12. No evidence was presented to the Tribunal that showed the claimant did not agree to the postponement or that he was not aware that he was not an employee and had not started employment because no start date had been

agreed. The emails and oral evidence presented to the Tribunal showed that the claimant was aware that no agreement had been reached regarding his start date.

13. Regarding the breach of contract claim, as the claimant's contract of employment never had an agreed start date, because it had been postponed, any claim for breach of contract fails as no right to be paid had arisen.

Conclusion

14. 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.

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Employment Judge Dennehy

DATE 25 March 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 April 2022

FOR THE TRIBUNAL OFFICE