



EMPLOYMENT TRIBUNALS

Claimant:

Mr J Wisniewski

v

Respondent:

Volution Ventilation UK Limited

JUDGMENT ON RECONSIDERATION

The claimant's application of 10 February 2022 for reconsideration of the reserved judgment sent to the parties on 28 January 2022 is refused.

REASONS

Introduction

1. The claimant's complaints of direct race and age discrimination and race and age related harassment were dismissed in a reserved judgment with reasons dated 24 January 2022 which was sent to the parties on 28 January 2022.
2. On 10 February 2022 the claimant's representative made an application for reconsideration, within the required 14 days from the date on which the judgment was sent. The application was referred to me on 22 April 2022.
3. In these reasons I have referred to the claimant's representative as Paul Wisniewski as he says he does not have a title such as Mr.

The rules on reconsideration

4. I considered the application for reconsideration under rules 70 to 72 of the Employment Tribunal Rules of Procedure 2013. Rule 70 says that a judgment may be reconsidered where it is necessary in the interests of justice to do so. On reconsideration the original decision may be confirmed, varied or revoked.
5. Rule 71 says that an application must be made in writing within 14 days of the date on which the written record of the original decision was sent to the parties.
6. Rule 72 says:

“An employment judge shall consider any application made under rule 71. If the judge considers that there is no reasonable prospect of the original decision being varied or revoked..., the application shall be refused and the tribunal shall inform the parties of the refusal.”

7. There is a public interest in the finality of litigation. This means that there must be some basis for reconsideration; the fact that a party disagrees with the findings made or conclusions reached is not sufficient. The reconsideration process is not an opportunity to provide further evidence which could have been provided at the time of the hearing.
8. Rule 72(1) requires me to consider whether there is any reasonable prospect of the original decision being varied or revoked. I need to decide whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice.

Paul Wisniewski’s application

9. I have considered the application with this test in mind. The application covers 29 pages and is not always easy to follow. It has no page numbers and not every paragraph is numbered. For reasons of proportionality, in these reasons I have not dealt with every paragraph in the application, but I have explained my conclusions on each of the grounds advanced by Paul Wisniewski for reconsideration, as I understand them.
10. Other documents were sent by Paul Wisniewski on 11 February 2022. These were notices to the EAT in five parts and a copy of a written case commentary. I have considered these documents as well as the reconsideration application. Paul Wisniewski sent other documents (new evidence) by including in emails links to a document upload system called wetransfer. It was not possible to consider these documents as the links had expired before the documents were downloaded.
11. References in this judgment to paragraph numbers are to paragraphs in the reserved judgment sent to the parties on 28 January 2022, unless otherwise stated.
12. Health and safety complaint: Paul Wisniewski says that the claim of 10 December 2018 included a complaint about ‘health and safety (whistleblowing)’ and he raises issues about plastic fumes and toxins at the claimant’s workplace. As paragraphs 2 to 5 explain, the issues for determination by us were recorded following the preliminary hearing of 6 July 2020. They did not include any whistleblowing complaint or any issues relating to fumes or toxins in the workplace. We discussed the issues in detail with the parties at the start of the hearing before us. We explained to Paul Wisniewski that health and safety issues would be taken into account if and as far as they were relevant to the issues we had to determine (paragraph 31). As is apparent from our judgment and reasons, the health

and safety issues were at most peripheral or contextual to the issues we had to determine.

13. Documents: Paul Wisniewski also says that the respondent unlawfully restricted the evidence and refused to disclose employment records. Paul Wisniewski made an application for disclosure which was considered at the preliminary hearing on 8 April 2020 and refused. A further application by him for disclosure was considered by us and refused at the start of the hearing before us (paragraph 14).
14. Corporate corruption: the application refers to corporate corruption in Reading. Again, this was considered by us at the start of the hearing on 24 May 2021. Our decision on this issue was set out in paragraphs 8 to 10 of our reserved judgment which was sent to the parties on 7 July 2021 (the judgment setting aside the dismissal of the race discrimination complaints).
15. Findings of fact: Paul Wisniewski challenges the evidence of the respondent's witnesses and the findings of fact which have been reached by the tribunal. At the hearing, the tribunal heard and weighed up the evidence and considered comments by the parties before making findings of fact on the balance of probabilities (that is, deciding what we think is most likely to have happened). The tribunal's findings of fact and conclusions were set out in detail in the reserved judgment and reasons. None of the claimant's assertions about the evidence or about the tribunal's findings provide a basis for reconsideration of the judgment.
16. Complaints of race discrimination/harassment: Paul Wisniewski says that a letter sent to the claimant on 30-31 August 2018 terminating his employment constituted direct and indirect discrimination and that it extends time for the race discrimination complaint. The sending of the letter was not one of the allegations of direct race discrimination which was identified as an issue for us to decide. There was no complaint of indirect discrimination identified for determination by us.
17. End of hearing on 9 September 2021: Paul Wisniewski says that the respondent's solicitor was still present when his connection to the CVP hearing was terminated at the end of the hearing on 9 September 2021, so he could not hear what was said between her and the tribunal. Nothing was said between the respondent's solicitor and the tribunal after the hearing ended. The clerk terminated the connection of anyone who was still present in the virtual hearing room after the hearing ended. She did so one by one in no particular order. Nothing was said by the tribunal members to anyone who remained in the hearing after the clerk started this process.
18. New evidence: Paul Wisniewski said he was sending new evidence. I have not been able to consider the evidence because the link to the document upload system has expired. But in any event, Paul Wisniewski has not explained why this new evidence has been produced after the hearing has finished. The interest in finality of litigation, that is the requirement that

disputes should be brought to a proper close rather than running on or being reopened, is particularly important in this context. In order to justify reconsideration on the ground of new evidence, it is necessary to show that the evidence could not with reasonable diligence have been obtained for use at the original hearing, that the evidence is relevant and would probably have had an important influence on the hearing, and that the evidence is apparently credible. No information is provided in the application to explain how these tests are met.

19. Having considered the claimant's application in full, I have concluded that the interests of justice do not require a reconsideration of the judgment and there is no reasonable prospect of the original decision being varied or revoked. The claimant's application for reconsideration is therefore refused under rule 72(1).

Employment Judge Hawksworth

Date: 26 April 2022

Judgment and Reasons

Sent to the parties on: 28 April 2022

For the Tribunal Office

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