Case No: 2405926/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr L Conway

Respondent: Tesco Extra

JUDGMENT

The claimant's application dated 16 and 22 March 2022 for reconsideration of the judgment made on 2 March 2022 and sent to the parties on 3 March 2022, is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The claimant's claims for disability discrimination and unfair dismissal were dismissed because the claimant did not comply with the terms of an unless order made on 26 October 2021 by Employment Judge Hill. That order followed the claimant's non-attendance at a hearing on 26 October 2021. When the claimant was contacted by the Tribunal at the time of the hearing, the claimant said he wished to withdraw his claim and would be sending a notice of withdrawal to the Tribunal, albeit he did not in fact do so. The dismissal of those claims was confirmed in a letter to the parties of 4 February 2022. The dismissal was under rule 38 and therefore no decision was required at the date of dismissal.

2. Rule 38 provides that a party may apply for a dismissal to be set aside. That must be done within 14 days of the date when the notice was sent to the parties. The claimant did not do so. Had he done so, his application would have been considered. The test which would have applied is whether it would have been in the interests of justice to do so.

3. My Judgment of 2 March 2022 struck out the claimant's claim for detriment for making a public interest disclosure. That Judgment was required because that claim was still ongoing as it had not been included within the terms of the unless order. A letter was sent to the claimant on 4 February 2022 with the proposal to strike out that claim because it had not been actively pursued and inviting any objection by 14 February. No response was received within the time required.

4. On 17 and 19 February, that is outside the time required, the claimant emailed the respondent and not the Tribunal. The last of those emails stated that the claimant still wanted to take the matter to Court regarding the respondent discriminating against him due to his disability. That is, the claimant was stating not that he still wished to pursue the claim which it was proposed would be struck out, but rather he wished to pursue one of the claims which had already been dismissed for non-compliance with the unless order. The respondent provided the Tribunal with copies of those emails.

5. On 1 March the claimant emailed the Tribunal stating that he had previously stated that he did not want the claim struck out which was about the way he was treated as a disabled person. That was the first time that he had contacted the Tribunal following the letter of 14 February. Accordingly, at the time that I determined that the claimant's claim for detriment for making a public interest disclosure should be struck out because it was not being actively pursued, the only statement I had from the claimant was one expressing a wish to still pursue an entirely different claim.

6. I have subsequently seen the claimant's emails of 16 March and 22 March. Those emails tell me that the claimant believes the way he was treated was shocking, he wants this re-opened and he believes my decision did not make any sense because he had told the Tribunal on 1 March that he did not want the claim struck out. He did of course tell the Tribunal this, but in relation to a claim for disability discrimination, not a claim for detriment for making a public interest disclosure.

7. I have considered the claimant's emails as an application for reconsideration of my Judgment. I have considered that application under rule 71. I have particularly taken note of the fact that the claim which the claimant wishes to pursue is not the one which I struck out and that the claimant has provided no other reason why it would be in the interests of justice for me to reconsider my decision.

8. 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). The Court of Appeal in **Ministry of Justice v Burton [2016] EWCA Civ 714** has emphasised the importance of finality, which militates against the discretion being exercised too readily.

9. 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.

10. 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.

11. For the reasons I have explained, the application for reconsideration is refused.

12. I would add that had I been considering whether it was in the interests of justice for the dismissal of the claimant's claim for disability discrimination to be set aside, I would not have decided that it was. The claimant has provided no reason for his lack of response to the unless order made, nor has he explained his non-attendance at the hearing or what was said to the Tribunal clerk at that hearing. Simply expressing a wish to pursue a claim now, when it had not been pursued previously, is not sufficient for it to be in the interests of justice to set aside the dismissal of the claim. Finality is important. In any event, that was not something which I needed to determine as that was not the Judgment I was reconsidering, and the claimant did not make an application to set aside the dismissal of that claim within the time required.

Employment Judge Phil Allen
5 April 2022

JUDGMENT SENT TO THE PARTIES ON
28 April 2022

FOR THE TRIBUNAL OFFICE