EMPLOYMENT TRIBUNALS

Claimant: Mr K Allen

Respondent: Advanced Adolescent Care Solutions Ltd

JUDGMENT

The claimant's application dated **26 May 2022** for reconsideration of the judgment sent to the parties on **19 May 2022** is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons:

1. On 26 May 2022 the claimant made a request for a reconsideration of the judgement given at the hearing on 22 April 2022 and for which reasons were provided on 19 May 2022.

2. The claimant's grounds for requesting a reconsideration, in summary, are as follows.

    a. That I was wrong to prefer the evidence of Karen German about how the claimant requested holiday

    b. That I was wrong not to give more weight to the claimant's evidence in light of the respondent deliberately withholding documentary evidence

    c. That I was wrong to prefer Karen German's evidence about how holiday requests were recorded

    d. That I ought to have analysed the disciplinary letters to determine the order of importance of each allegation and I did not do so

    e. That the claimant has now obtained additional evidence which explains, he says, how he obtained details about the case that he otherwise would not have known

f. That I wrongly excluded evidence in the form of a Peninsula contract

g. That I was wrong to accept the respondent's copy of the employment contract as the correct one

h. That the claimant was at a disadvantage in representing himself

3. Rule 70 of the Employment Tribunal Rules of Procedure 2013 says, as far as is relevant,

   "A Tribunal may, either on its own initiative…or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decisions ("the original decision") may be confirmed, varied or revoked. If it is revoked, it may be taken again".

4. Rule 72(1) says:

   (1) 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 (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

5. In *Outasight VB Ltd v Brown* 2015 ICR D11, EAT, the EAT referred to the previous rules as a useful guide to matters which may form the basis of a reconsideration. They said:

6. Subject to paragraph (4), decisions may be reviewed on the following grounds only —

   a. the decision was wrongly made as a result of an administrative error;

   b. a party did not receive notice of the proceedings leading to the decision;

   c. the decision was made in the absence of a party;

   d. new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time; or

   e. the interests of justice require such a review.

7. The ground interests of justice gives the tribunal a broad discretion, but the interests of justice apply both to the claimant who is requesting a

reconsideration and the respondent, as well as the importance of the general principle of the finality of litigation. It may also be appropriate to reconsider a judgment in light of other events after the hearing or to ensure that a party is able to exercise their right to a fair hearing under article 6 of the European Convention on Human Rights.

8. In respect, specifically, of the introduction of new evidence, in *Ladd v Marshall* 1954 3 All ER 745, CA, the Court of Appeal said

   "To justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible".

9. Addressing the claimant's grounds as set out above, grounds a, b, c, d, f and g amount to the claimant disagreeing with the decision to which I have come.

10. It would not, in my view, be in the interests of justice to reconsider the decision on this basis. I have made my findings and set out the reasons for them. I recognise that the claimant does not agree with them, but in the interests of the finality of litigation and certainty for both parties those findings must stand unless and until overturned by a superior court.

11. Ground e relates to additional evidence. Specifically, the claimant says that the evidence he has subsequently obtained supports his case that there was a legitimate reason why he knew information about the case, so that the allegation that he had wrongly discussed the matter with colleagues or others while suspended should not stand.

12. There are a number of reasons why this ground is not sufficient to justify a reconsideration.

13. Firstly, the claimant has not shown that the evidence could not reasonably have been obtained before the hearing. He appears to have obtained it relatively easily and it appears to have been available before the hearing if requested.

14. Secondly, the evidence is unlikely to have had a significant influence on the outcome of the case. For the purposes of the unfair dismissal case, the relevant question is what the dismissing officer reasonably believed at the time so that newly obtained evidence is unlikely to impact on that. It may be that it could give weight to an argument about the adequacy of any disciplinary investigation but that was not in issue in this case as it was a claim for automatically unfair dismissal only.

15. It might be argued that the evidence is relevant to the breach of contract claim, but the content of the information now obtained does not identify what was discussed with the previously involved social services officer. It does not, therefore, substantively support the claimant's case that he

obtained the information from somewhere other than by talking to colleagues about the matters. The evidence appears to be from a neutral and credible source. However, given its lack of relevance to the substantive issues that does not assist the claimant.

16. In respect of ground h, the claimant was representing himself and the respondent had the benefit of professional representatives. It could well be argued that this put the claimant at disadvantage, but self representing litigants are a regular feature of tribunal (and other court) proceedings. The claimant was clearly able to follow proceedings well, he made a number of detailed, coherent and complex submissions (including about the admissibility of evidence) and his circumstances were not so unusual that the fact that he was representing himself could come close to contravening his right to a fair trial.

17. For these reasons, I find that there is no reasonable prospect of the original decision being varied and the claimant's application for a reconsideration of the judgment is refused.

_____

Employment Judge **Miller**

Date: 20 June 2022