Case No: 2402412/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Ali**

Respondent: **Dnata Ltd**

JUDGMENT

The claimant's application dated 9 June 2022 for reconsideration of the judgment sent to the parties on 31 May 2022 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in a 10-page document attached to an email dated 9 June 2022. (The claimant also attached a copy of the Judgment and some other documents related to the case). References in square brackets (e.g. [25]) are references to paragraph numbers from the reasons promulgated with the judgment.

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 submissions made on the law and evidence at the preliminary hearing. 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:

Concerns relating to "procedural irregularity"

9. At paragraph 3(a) of the application, Mr Olufunwa appears to take issue with observations in the Judgment regarding his expertise in employment law. To the extent that there is any inaccuracy in that summary, I am happy to offer an apology. It remains that case, however, that the application was not presented in the way that I would expect a specialist employment lawyer to present such an application. I was therefore careful to try to assist Mr Olufunwa and Mr Ali – for example by prompting submissions on various points – in a similar way to that in which I would seek to assist a litigant in person.

10. The subsequent paragraphs contain a detailed discussion of procedural matters which had taken place in the lead-up to the hearing. The respondent's representatives criticised the claimant's representative in relation to the ineffective 8 December hearing and failure to comply with Orders emerging from that hearing in a timely way. There was a suggestion that the respondent may object to the claimant relying on documents which (they said) had been served late. In the end, the respondent agreed to focus on the substantive issues and the claimant was permitted to make full use of those documents. In the circumstances, therefore, I do not understand why those issues are said to be relevant to a reconsideration

request. Those matters are rehearsed briefly in the decision by way of setting out the background, but also because the respondent had indicated that it may seek to make a costs application in respect of the earlier hearing. (So far as I am aware, no such application has, in fact, been advanced). They did not influence my decision in relation to the limitation point.

12. In respect of paragraph 3(b), Mr Olufunwa suggests that he was prevented from making a comparative analysis of facts between the present case and the case of **Norbert Dentressangle Logistic Ltd v Hutton UKEATS/0011/12/BI**. The Judgment records that Mr Olufunwa's submissions drew extensively on this case [41]. My own notes record Mr Olufunwa being asked to focus his submissions on the time limit point (as opposed to addressing the merits of the underlying claim) but they do not record, and I do not recall, preventing Mr Olufunwa from discussing the decision in **Hutton**. As noted in the Judgment, I was unfamiliar with this authority and was keen to consider it carefully. In any event, having considered the authority in detail, I concluded that it was a case decided on its own facts which did not establish any relevant principle bearing on how this case was to be determined [40].

13. At paragraph 4(d) Mr Olufunwa disputes the statement in the judgment [19] that he did not seek to ask supplementary questions of Mr Ali. The hearing was not recorded (in line with usual practice in Employment Tribunals). My notes record that Mr Olufunwa did not seek to ask supplementary questions when Mr Ali's evidence was introduced. Following (fairly detailed) cross-examination and questions from the Judge, Mr Olufunwa did then have a short amount of re-examination for Mr Ali, which may have given rise to the confusion.

14. The other matters raised are dealt with by the general comments at paragraph 7 above.

Conclusion

15. 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.

Employment Judge Dunlop
DATE: 22 June 2022

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JUDGMENT AND REASONS SENT TO THE PARTIES ON
23 June 2022

FOR THE TRIBUNAL OFFICE