EMPLOYMENT TRIBUNALS

Claimant: **Mr B Lingard**

Respondent: **Sussex Partnership NHS Foundation Trust**

Heard at: **Bristol (decision on papers in Chambers)**

Before: Employment Judge Midgley

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The claimant’s application for reconsideration is refused because there it is not in the interests of justice for the decision to be varied or revoked.

REASONS

1. The claimant seeks reconsideration of the Judgment of 25 May 2022 by which a costs order was made against him. The Judgment was sent to the parties on 1 July 2022 (“the Judgment”). A certificate of correction was issued in respect of that Judgment and an Amended Judgment, showing the corrections in red and underlined text was sent to the parties on 4 July 2022 (“the Corrected Judgment”)

2. The claimant has sent an unmanageable number of emails to the Tribunal in this litigation: since 25 May 2022 the claimant has sent over 400 emails. Furthermore, since the dates on which the Judgments above were sent to him, the claimant has sent emails with increasing frequency. The effect has been that identifying which emails contain applications, which repeat those or introduce new one, which are complaints, and which are repeating matters which form grounds of appeal which should be presented to the Employment Appeal Tribunal, is nigh on impossible.

3. The claimant has been given guidance in relation to his conduct, he has been directed only to send emails containing urgent applications, to direct complaints to the Judicial Ombudsman and to send correspondence relation to his appeals to the Employment Appeal Tribunal. He has received warnings that his claims may be struck out if he continues in his conduct. He continues to ignore all such guidance and direction.

4. The claimant has made numerous previous applications for reconsideration and therefore knows that he must identify the Judgment he seeks reconsideration of and knows that he should explicitly state that he is making an application for reconsideration in respect of that Judgment. Consequently, emails which merely direct vitriolic abuse at the Judge in respect of the Judgments have not been treated without more as being an application for reconsideration or an expansion of the grounds.

5. The matter is complicated by the claimant's repeated applications for reconsideration of the decision not to permit a further reconsideration of the Judgment in case 1401244/2021 (by which the claimant was Ordered to pay a deposit to continue to pursue his claims). Those applications are irrelevant to this application for reconsideration, save in so far as the claimant relies upon the suggestion that I am committing fraud on the Court, and generally corrupt and am part of a masonic conspiracy involving the Regional Employment Judge, the respondent's solicitors and counsel and the Senior Management of the various NHS Trusts against whom the claimant has pursued claims, and certain members of the police, which is an argument he prays in aid of this application.

6. Viewed in those constraints, the claimant has sent the following emails which may be regarded as an application for reconsideration or expansion of the grounds for reconsideration against the cost Judgments:

   4.1 On 3 July 2022 at 8:56 in relation the Judgment: The email stated that the grounds of the application were to follow but identified the key grounds that the application for costs duplicated the period and costs awarded in claim 2300941/2020 against the claimant by EJ Hyams-Parish in March 2022. The respondent relied upon the same emails to evidence the unreasonable conduct. The claimant argues that issue or cause of action estoppel prevents the respondent from pursuing the costs application in these proceedings. In addition, the claimant argues that the claim should have been transferred to a different region; although he did not apply for reconsideration of that decision.

   4.2 On 4 July 2022 at 16:32 in relation to the Amended Judgment: the claimant merely repeated his objection and stated that the Judgment was 'an abuse of process.'

4.3 On 5 July 2022 at 05:59 in relation to the Amended Judgment: the claimant submitted an application to set aside the Judgment, which consistent of an email which was repeated in a 7-page letter attached to the Judgment. The new grounds identified within it were that

a) the refusal of the claimant's application for a preliminary hearing to determine whether the respondent's costs application was cause of action estopped or issue estopped rendered the costs application unsafe. He argued that 14 days' notice of the fact that that application would be heard at the preliminary hearing was required.
b) The respondent's claim for costs relied upon emails which were sent after the Judgment of 4 March 2022 by which claim 1401373/2021 was dismissed
c) The respondent's claim for costs included costs incurred in relation to claim 2300941/2020.

4.4 On 7 July 2022 at 09:54 in relation to the Amended Judgment: the claimant argued that the amended Judgment was issued in breach of Rule 69, because it was not a correction of any clerical mistake or other accidental slip or other mistake.

7. On 4 July 2022 the respondent objected to the claimant's application for reconsideration, but noted that the email of 3 July 2022 at 8:56 indicated that the full grounds were to follow.

8. On 11 July 2022, I directed that the respondent should comment on the detailed grounds that were provided in the email and application sent by the claimant on 5 July 2022 at 5:59 and indicated that I would consider the matter on the papers without a hearing.

9. On the same day, in an email sent at 13:42 the claimant stated that had not applied for reconsideration under rule 72 but rather had applied for the Judgment to be set aside, but that a 'more substantial' application for reconsideration would follow. Factual and legally that was inaccurate. The claimant had applied for reconsideration and the Tribunal's power to revoke a Judgment is provide by Rule 72; if no application is made under that rule the only avenue open to the claimant to set aside a Judgment is by appeal to the Employment Appeal Tribunal.

10. I pause to observe that any application in respect of the Amended Judgment had to be received by 18 July 2022 in accordance with Rule 72.

11. On 13 July 2022 at 02:58 the claimant provided further grounds for reconsideration. which attached a 9-page letter. I directed the respondent to comment on those grounds and a response was received on 12 August 2022.

12. The grounds for reconsideration are only those set out in Rule 70, namely that it is in the interests of justice to do so.

13. I address each of the grounds that I have been able to identify in turn below:

Cause of action and/or issue estoppel

14. The claimant argues that as the respondent has previously obtained a costs order in case number 2300941/2020 it is prevented by cause of action or issue estoppel from pursuing an application for costs in respect of the costs of defending claim number 1401373/2021. That argument is inherently misconceived and erroneous. Whilst the basis of the costs application in each of the claims is identical, namely a complaint that costs should be awarded pursuant to rule 76 on the grounds that the claimant's pursuit or conduct of the proceedings has been unreasonable, vexatious or abusive, the costs incurred as a consequence of that conduct which are the subject of the application differ. A party is entitled to make a series of costs applications in relation to a single claim, provided that the events which form conduct in respect of which the application is made and the costs that are claimed are not duplicated.

15. Put simply, the respondent was entitled as a consequence of rule 76 to make an application for costs in respect of the claimant's conduct in each of the claims, whether 2300941/2020 or 1401373/2021. The question of whether or not those applications were predicated on the same conduct and in respect of the same costs is addressed separately below.

Duplication of costs claimed

16. Insofar as the claimant seeks to argue that the costs have been duplicated between the two claims, for the reasons given in the Judgment of 25 May 2022, I was satisfied that that argument was without evidential basis. The costs covered in the two schedules of costs were distinct and separable, and the claimant advanced no sensible basis to demonstrate that the two schedules of costs covered exactly the same work. He provided not a single example to demonstrate that argument in any of his written documents prior to the hearing, and none in the extensive correspondence he has sent since the hearing in support of his application for reconsideration.

Reliance on evidence which related to claim 2300941/2020

17. Secondly, in so far as the claimant complains that the respondent's reliance on emails that were sent in relation to claim 2300941/2020 were irrelevant, and therefore that it was an error of law to consider them, again

that argument is wholly misconceived. The respondent is entitled to point to the claimant's prior conduct in relation to claim 2300941/2020 to demonstrate that his conduct in respect of claim 1401373/2021 was unreasonable, vexatious or an abuse of process. The essential premise of that argument is that the claimant's continuation of the conduct, despite the clear warnings from the respondent, the respondent's representatives, and various judges, makes the claimant's conduct *worse and more serious* than that in claim 2300941/2020 (which EJ Hyams-Parish concluded was unreasonable and vexatious and 'harassment.') The claimant had been told what he was doing wrong, and therefore he could have been in no doubt of the manner in which it would be viewed by the Tribunal and the respondent, but he willingly and deliberately continued in it.

18. Critically, there *was* evidence of the claimant's unreasonable and abusive and/or vexatious conduct in respect of the emails sent solely in connection with claim 1401373/2021: it consisted not only in the nature of some of the emails, in particular the tone and the intent with which they were sent, but also in their being viewed against the prior conduct, and in their number and frequency. Again, as indicated in the judgment of the 25 May 2020, I was satisfied that the claimant knowingly and deliberately sent the volume of emails in question for an improper purpose: namely, to force concessions from the respondent against the background of increasing costs caused by the claimant's volume of emails.

19. Neither the claimant's application for reconsideration nor the many documents in which he repeated his arguments disclose a single example to demonstrate that the conclusions reached in relation to his conduct were impermissible, un-evidenced, or could not or should not lawfully have been regarded as unreasonable, vexatious or abusive within the definition in Rule 76.

Amended Judgment was produced in breach of Rule 69

20. The claimant argues that the amended Judgment could not be produced under Rule 69 as it was not the "correction of a clerical mistake or other accidental slip or omission."

21. A consequence of the claimant's practice of sending 10 or 20 emails a day is that regularly when a referral has been made for a direction or a Judgment and the direction or Judgment is being drafted, further emails which may be of relevance to the decision are received. It is necessary to try to an identify those which were raised with the Judge whether directly by the claimant at a hearing or because they have been referred to the Judge by the casework team at HMCTS. The claimant appears to believe that the mere fact that he sends an email has the consequence that a Judge is instantly aware of it. That is an absurd fallacy.

22. The process of endeavouring to distinguish between the emails which were sent to the Tribunal made the production of the Judgment and reasons of 1 July 2022 far longer and more complex than it needed to be. I consequence, the Judgment contained an error, as I had seen an email of 15 May 2022 in which the claimant applied for reconsideration (as detailed below). The process of reflecting such changes in the Judgment caused there to be several drafts.

23. When sending the Judgment for handing down to the parties, I attached the wrong draft, which was incomplete. That is apparent from one paragraph of the Judgment that was obviously incomplete. That is a clerical mistake or an accidental slip. A certificate of correction and the amended Judgment were issued using red font and underlined text to enable the parties to identify what the changes were.

24. On re-reading the Judgment I note that a number of typographical errors remain; I apologise for that but am certain that the Judgment remains sufficient clear and capable of comprehension.

25. The claimant has not shown that there was a breach of Rule 69, not that it would be in the interests of justice to vary or revoke the costs Judgment as a result.

The Judge committed fraud on the court by refusing the claimant's application for a preliminary hearing to hear the claimant's argument of issue or cause of action estoppel

26. It is correct that I refused the claimant's application for a separate preliminary hearing prior to that which was listed on 25 May 2022 to hear the arguments in relation to estoppel. The question of whether to postpone a hearing is a matter of judicial discretion. The claimant has not identified any basis on which it could sensibly be said that I took into account irrelevant factors or that I failed to take account of relevant ones in exercising my discretion not to postpone the preliminary hearing. As indicated in my previous directions, I refused the application because there was insufficient time to list a separate preliminary hearing before the preliminary hearing on 25 May 2022, it was not in the interest of justice to adjourn that preliminary hearing, and the claimant was not prejudiced by that decision as he could have made his arguments relating to estoppel during the preliminary hearing itself. He chose to leave the hearing rather than to participate in it. That was his choice, but the consequence was that he did not expand upon the arguments that he now seeks to advance.

27. Insofar as the claimant alleges that my decision in relation to the application for a preliminary hearing to address the arguments on estoppel, or

my costs judgment itself, was influenced by any form of masonic conspiracy, or other conspiracy involving the respondent, its representatives, the Regional Employment Judge, members of the police or any other third party, he has not advanced a single piece of evidence to support such wild and wholly unfounded and insulting allegations, beyond his repetition of his dissatisfaction with the outcomes and process adopted in relation to his claims.

Fraudulent use of the court: rejecting an application for reconsideration in claim 1401244/2021 on 28.03.22 on the papers and then issuing a second rejection on 25 May 2022, a matter which the claimant had no notice of and which was heard in his absence.

28. The claimant's application for reconsideration which was made on 9 March 2022 was in respect of the deposit Orders in claim 1401244/2021. It identified that claim number at the outset of the application but referred to claim 140373/2021 in the body above the grounds. It was dismissed by Judgment dated 25 March 2022.

29. On 15 May 2022 the claimant applied for reconsideration in a lengthy document entitled 'app'. Although that document used the claim no 1401244/2021 the grounds of the application related to the Judgment striking out claim 1401373/2021. The application contained extension allegations of collusion and corruption directed at me, EJ Richardson and REJ Pirani and argued that I had failed to consider the arguments contained in his skeleton argument which was submitted before the hearing. To complicate matters, it formed one of 15 emails containing complaints about the hearing which were referred at the same time.

30. I refused that application on 24 May 2022 on the grounds that it had previously been refused on 25 March 2022. That was in error, as the Judgment of 25 March related to claim 1201244/2021 not 1401373/2021.

31. Having conducted the hearing on 25 May 2022, I determined that it would be in the interests of justice and would assist the claimant to receive full written reasons for the Judgment on recusal and costs. Due to need to hear other cases, there was some delay in securing time to write the reasons. Whilst writing the reasons, I reviewed the directions of the 24 May 2022 (the claimant had sent 92 emails to the Tribunal between the date of that direction and the conclusion of the written reasons) and identified that the Judgment of 28 March 2022 related to claim 1401244/2021 and not 1401373/2021. I noted the need to address it, but regrettably did not record that reasoning in the Judgment itself.

32. For the avoidance of doubt, I heard no argument in relation to the application at the hearing on 25 May 2022 but decided it on the papers in chambers.

33. Therefore, the Judgment on reconsideration sent on 1 July 2022 remedied the error of the refusal to consider the application on 24 May 2022. The error was caused by (a) the claimant using the wrong claim number in the title and header of the application and (b) my belief, based on the detail of the referral and the title of the application, that it had already been determined.

34. That course causes no prejudice to the claimant; it certainly does not establish a fraud on the court, nor does it demonstrate any basis on which it would be in the interests of justice to vary or revoke the order for costs; the decisions in question do not connect to the Judgment on costs.

Conclusion

35. In any event, the claimant had raised all of those grounds (with the exception of those relating to Rule 69) to a greater or lesser extent before the hearing and they were therefore considered in reaching my conclusions on the application for costs.

36. In so far as the application entreats me to reconsider and review my decision on matters of fact or arguments which I have previously determined, the Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful, he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order".

37. There was no denial of natural justice in this case; rather I considered the evidence and the parties' arguments and found on balance that a costs order should be for the reasons recorded in the Judgment. That is the usual process of a Tribunal where facts and their consequence are disputed.

38. Accordingly, I refuse the application for reconsideration pursuant to Rule 72 because it is not in the interest of justice for the Judgment to be varied or revoked.

Employment Judge Midgley
Dated 12 August 2022

Judgment sent to the parties: 15 August 2022

FOR THE TRIBUNAL OFFICE