



EMPLOYMENT TRIBUNALS

Claimant: Mr D Hadam

Respondents:

1. Liverpool Recruitment Company (UK) Limited
2. Focus Payroll (Services) Limited (in liquidation)
3. 3S Northampton Limited

JUDGMENT

The Claimant's application for the Judgment of 1 July 2022 to be reconsidered is refused.

REASONS

1. At the conclusion of the Hearing on 1 July 2022 the Tribunal dismissed the Claimant's claims. The Judgment and reasons were sent to the parties on 8 July 2022.
2. An application for reconsideration must be brought within 14 days of the date the Judgment is sent to the parties (see Rule 71 of the Tribunal's Rules of Procedure). On 11 July 2022 the Claimant applied for an extension of the time limit to make an application. He asked for an extra 14 days or "ideally" an extra 28 days. He said that he was having difficulties in reading the Judgment and reasons because of "acute anxiety attacks, PTSD and other mental illness symptoms". He needed time to meditate to put himself in the right frame of mind to read the document, or enough time to read it slowly bit by bit. The Reasons run to 18 pages, of which 2 pages are an extract from an agreed transcript of a conversation. On 12 July 2022 the Claimant submitted various pieces of medical evidence in support of his application.
3. On 19 July 2022 the Tribunal granted the Claimant a 7-day extension of time, using its power under Rule 5. The Claimant wrote on 24 July 2022 asking for

this decision to be reconsidered but this was refused, the Tribunal seeing no basis for departing from its previous decision.

4. On 28 July 2022 the Claimant applied for the Judgment to be reconsidered and varied to uphold his claim. The grounds for the application are extensive, running to 13 pages of single-line-spaced text.
5. The Employment Judge has given the application for the Judgment to be reconsidered initial consideration under Rule 72(1) of the Tribunal's Rules of Procedure. In considering the application, the Tribunal has assumed that it relates to the Judgment in the claims against the First and Third Respondents only, since the claim against the Second Respondent was dismissed with the Claimant's consent.

Conduct of the Hearing

6. The greater part of the Claimant's application relates to what he believes to be shortcomings in the conduct of the Hearing by the Employment Judge and the failure of the Tribunal to make what he says are reasonable adjustments for his status as an unrepresented litigant and his disability of anxiety and depression. He says that these amounted to a failure to comply with the overriding objective in Rule 2 of the Tribunal's Rules, and in particular the need to ensure that the parties are on an equal footing. Effectively, he says that this failure means that it is necessary in the interests of justice for the Tribunal's decision to be reconsidered.

General findings

7. The Employment Judge confirms that during her conduct of the Hearing she was fully aware of the need to comply with Rule 2, and, in particular the need to take into account the fact that the Claimant is a litigant in person and the Respondents are legally represented. She was also aware of the Claimant's disability and the need to make any adjustments for it that might be reasonable.
8. In his claim form, when asked what assistance he might need for any disability, the Claimant said: "I need people to speak slowly and simply as I get panic and anxiety attacks during which my thought process is impaired and I struggle to focus." In the agenda for the first Preliminary Hearing for case management on 4 November 2021, the Claimant gave no reply to the question as to what special requirements he might have for the Hearing. When asked in the agenda for the second Preliminary Hearing for case management on 7 February 2022 what special requirements there might be for the Hearing, the Claimant said "TBC".

9. As the Employment Judge who chaired the panel at the final Hearing also conducted the Preliminary Hearing on 7 February 2022, she can confirm that the Claimant did not raise in that Preliminary Hearing any particular adjustment he might need at the final Hearing, nor did his conduct at the Preliminary Hearing put the Tribunal on notice that he might need any. The Claimant conducted the Preliminary Hearing in an articulate, calm and assertive manner, dealing fluently with the legal issues that arose from his claim.
10. The Claimant says that the Tribunal should have provided him with emotional support to help him at the Hearing. The Employment Judge does not consider that would have been practicable or reasonable. She was mindful of his disability and the fact that he is a litigant in person and treated him with fairness and respect throughout. The requirement in Rule 2 to ensure that the parties are on an equal footing does not extend to giving one party emotional support.
11. The Claimant says that the Employment Judge did not explain the Tribunal process, so that he was going through the whole process “blindfolded”. The Tribunal does not accept that the Claimant was unaware of the Tribunal process. He has brought several Tribunal claims and had attended at least one public Hearing before this one. He is an intelligent man, and it is apparent from what he has said in his extensive correspondence with the Tribunal and at the Preliminary Hearing on 7 February 2022 that he is well aware of his legal rights and the Tribunal process. Further, the Employment Judge explained what the Hearing would involve at the start of the Hearing and had an ongoing discussion with the parties about the timetable for the Hearing as it progressed. The Claimant knew how the Hearing would proceed.

The Claimant’s evidence

12. The Claimant says that he did not realise he needed to provide a witness statement until two days before he was due to exchange it with the Respondents. This led him to rush the preparation of his statement, leading to discrepancies which caused the Tribunal to conclude he was an unreliable witness. The Employment Judge is satisfied that she explained at the Preliminary Hearing when the exchange of witness statements was discussed that all witnesses, including the Claimant, needed to provide a witness statement.
13. The Claimant criticises the Tribunal for not asking him to give evidence on his stress-related learning difficulties, which were relevant to his claims that Mr Vaughan had subjected him to harassment and discrimination arising from his disability. The onus is on the party asserting a particular matter to provide the evidence to support that assertion. In his own application, the Claimant says that the tasks he was involved in when working with Mr Vaughan were very

- simple or involved him just standing and watching what Mr Vaughan did. This appears to support the Tribunal's finding that there was no evidence to indicate that the Claimant had any difficulty with learning or carrying out tasks sufficiently quickly while working for the First Respondent. In any event, these aspects of his claim failed because the Tribunal did not accept that, even if he had those difficulties, Mr Vaughan's actions were because of or related in any way, to those matters.
14. The Claimant says that he should have been given the questions that were to be put to him in cross-examination in writing in advance. If the Claimant had shown any signs of struggling to deal with the questions put to him in cross-examination, the Tribunal would have considered what adjustments might be needed. In fact, the Claimant was clear and assertive in his answers to cross-examination. The Respondents' representatives were thorough but measured and fair in the questions they asked and how they phrased them. The Employment Judge intervened on occasion to curtail a few questions that were repetitious or irrelevant to the allegations, but otherwise identified no need to intervene to take into account the effects of the Claimant's disability. He showed no sign at all of being susceptible to suggestions put to him in cross-examination and stated his position clearly on the points put to him. He showed no sign of being unable to think clearly or understand the questions put to him. He answered all questions promptly and fully. Had the Employment Judge identified a need to intervene, from her own observations or from the Claimant's request for help, she would have had no hesitation in doing so.
15. The Claimant complains that he was not given the opportunity to clarify his answers, in the equivalent of re-examination for a represented party. The purpose of re-examination is to allow a witness to clarify any answers they have given that are unclear or require further explanation. The Claimant's answers were clear, full and unequivocal. The Employment Judge intervened on the very few occasions on which it was necessary to check that the Tribunal had correctly understood the Claimant's answers. He has not identified any answers he gave that he would have wanted to clarify or further explain.
16. The Claimant says that the Employment Judge concluded that he was lazy. That was no part of the Tribunal's findings.

The Respondents' evidence

17. The Claimant says that he was unable to prepare himself for the Hearing properly because the Respondents provided their witness statements only one week before the Hearing, when the Tribunal had ordered them to be exchanged on 6 May 2022. He says that he struggles to read documents and has still not read the statement of one of the witnesses, Mr Vaughan, because

- he found it so traumatising. He says that he had a “very bad emotional breakdown” after receiving the statements and so was in fact unable to read them until two days before the Hearing.
18. The Respondents’ witness statements run to a total of less than 16 full pages, five of them in double-line spacing. The Tribunal does not accept that the Claimant had difficulty in reading them in time to prepare for the Hearing. At the Hearing, the Claimant mentioned that statements had been exchanged late but he did not ask for more time to prepare and he in fact had a pre-prepared list of questions for cross-examination of each witness, including Mr Vaughan. He has made no mention of having had a “very bad emotional breakdown” just before the Hearing until now.
 19. The Claimant says he should have been given written instructions on how to cross-examine. The Employment Judge does not accept that this would have been reasonable or feasible. The Claimant had already experienced cross-examination at a previous Preliminary Hearing and knew what was involved. The Employment Judge explained to him that the aim of his cross-examination should be to ask questions to test the truth, accuracy and completeness of the Respondents’ witnesses’ evidence. On a few occasions, she assisted the Claimant by helping him frame the questions he wanted to put to a witness and putting them on his behalf, for which he thanked her.
 20. The Claimant complains that “hearsay” evidence was relied upon by the Tribunal. (In relation to this part of the application, the Judge has assumed that the Claimant has got references to Mr Joe Pragnell and Mr Ian Pragnell the wrong way round.) This appears to be a reference to the Tribunal accepting that an individual who did not give evidence, Mr Joe Pragnell, had not been informed about something. The Tribunal reached that conclusion on the basis of the evidence presented to it. It was for the Respondents to decide who they wished to give evidence on their behalf. The fact that they did not ask Mr Joe Pragnell to give evidence does not mean that they were trying to conceal his evidence, as the Claimant alleges.
 21. The Claimant asserts that no evidence was provided to establish that the job on which he was working had ended when he was asked to leave and that the invoices the Third Respondent did provide were incomplete. The Employment Judge does not accept that. During the course of the Hearing the Third Respondent produced documents for the relevant period and the Tribunal ensured that the Claimant had adequate time to consider these.
 22. The Claimant complains that Mr Vaughan put him off by making accusations against him in the course of answering his questions in cross-examination. The Tribunal accepts that Mr Vaughan’s answers involved assertions that the Claimant did not accept. Mr Vaughan’s version of events was different to that

- of the Claimant. He was entitled to give his own account. There was no need for the Claimant to respond to his assertions.
23. The Claimant complains that the Employment Judge prevented him from asking questions of Mr Vaughan. It is the case that, after allowing the Claimant to ask some questions of Mr Vaughan about his health, the Judge did ask him to move on to his next area of questions. This was because the witness had made clear that the nature of his physical ill-health was something he did not want to disclose in public. As it was not relevant to the issues in the claim the Judge made clear that it should not be the subject of further questions. In relation to the allegation referred to in the Reasons as harassment 3, the Claimant complains that the Tribunal accepted Mr Vaughan's evidence about the Claimant's ill-health and thought processes where it should have given him the opportunity to give his own evidence about those matters. The Tribunal in fact based its findings on this allegation on its own assessment of the recording and transcript of what the Claimant and Mr Vaughan said during the incident, not Mr Vaughan's opinion of what the Claimant's thought processes might have been.
24. The Claimant complains that the Employment Judge prevented him from asking questions of Mr Ian Pragnell about his arrangements with Jason. The Judge did not prevent the Claimant asking any questions that were relevant to whether Jason was the Third Respondent's agent or not, which was the issue to be determined.
25. The Claimant says he was too exhausted to complete his cross-examination as he would have liked. If that was the case, there was nothing he said or did to make that apparent to the Tribunal. If he had asked for further time, the Tribunal would have considered that request. The Claimant was capable of identifying what breaks he needed: he asked for breaks during the Hearing, and these were readily granted.
26. In the light of the Claimant's allegation that the Employment Judge was in some way biased against him, it is worth recording here that on at least two occasions the Claimant thanked the Judge for her help in framing his questions or putting questions on his behalf. She had also made clear at the beginning of the Hearing that she would give him any help she could in managing his time for cross-examination of the Respondents' witnesses.

Submissions

27. The Claimant complains that he did not have enough time to read the First Respondent's written submissions. These were 15 pages long, in double-line spacing. The Tribunal directed that the Claimant be provided with the written submissions at least an hour-and-a-quarter before the final day of the Hearing began and they were in fact supplied an hour and 37 minutes in advance. In

the event, the Claimant had a further 20 minutes to consider them during a break in the Hearing, giving him around two hours in total. If he had needed more time, he could have asked for it and the Tribunal would have considered that request.

28. The Claimant has not identified what he would have wanted to say in response to the submissions had he had more time. He provided his own written submissions, which the Tribunal took into account. In any event the Tribunal based its decision on all the evidence and relevant legal principles, not just those raised in the First Respondent's submissions.

The Judgment and reasons

29. The Claimant alleges that there are a lot of discrepancies between the oral and written reasons. As the Employment Judge explained at the Hearing, in its oral reasons the Tribunal was giving only a summary of the principal reasons for its decision, so that the parties knew why it had reached the conclusions it had. Although the written reasons are more detailed than the oral reasons, they do not depart in any material way from the reasons given orally at the Hearing.
30. The Claimant also complains that he struggled to take the Judgment because of his mental ill-health. The Judge can identify no adjustment that the Tribunal could reasonably have made to assist the Claimant with this, given the need to inform the parties what the Tribunal had decided and why.

Findings of fact

31. The Claimant complains that the Tribunal was wrong to make various findings of fact. Nearly five out of the 13 pages of his application deal with the points the Claimant wanted to make about the Tribunal's findings. He says that, had he had more time to make his application for reconsideration, he would have been able to identify the Tribunal's errors more accurately and comprehensively. At the same time, he says that he is too unwell to do "proper rectifications". If that is the case, it is difficult to see how the seven extra days he says he should have been given to make his application would have assisted him. As he says that he has still been unable to read the written reasons in full, it is also difficult to see how he can identify that "every single allegation judgement is not factually accurate".
32. In any event, it is not appropriate to challenge a Tribunal's findings of fact by way of an application for reconsideration. For the avoidance of doubt, the Employment Judge confirms that the Tribunal made its findings on the basis of the evidence presented to it and the Judge is satisfied that the Tribunal had a reasonable and reasoned basis for all of them.

Summary and conclusion

33. The Employment Judge is satisfied that the Hearing was fairly conducted, in compliance with the overriding objective and taking into account the Claimant's disability and status as an unrepresented litigant. There is no reason to believe that it is necessary in the interests of justice to revoke the Judgment.
34. As the Judge does not consider there is any reasonable prospect of the Tribunal's original Judgment being varied or revoked, the Claimant's application for reconsideration is refused.

Application for recusal

35. On 21 August 2022, the Claimant applied for Employment Judge Cox to be withdrawn from the case or that she should recuse herself, on the basis that there was "clear apparent bias from the Judge" against him during the Hearing. Later in the application he asserts that the bias was intentional. The Claimant bases this recusal application on the same allegations relating to the Judge's conduct of the Hearing that he raised in his application for reconsideration.
36. The Judge refuses the application for recusal. The Claimant did not raise the issue of bias at the Hearing itself and the Employment Judge has already addressed the matters the Claimant raises in this decision on his application for reconsideration. For the avoidance of doubt, the Employment Judge does not accept that she acted in a way that displayed any actual or apparent bias against him in her interactions with him or with the other parties, witnesses and representatives.

Employment Judge Cox
Date: 31 August 2022