



EMPLOYMENT TRIBUNALS

First Claimant: Mrs M Casey

Second Claimant: Mr D Taylor

Third Claimant: Mrs M Wood

Respondent: Manchester Hall Limited (In Liquidation)

JUDGMENT

The claimant's application dated 13th September 2022 for reconsideration of the judgment given orally on 12th September 2022 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment given orally on the 12th September 2022 upholding the claims of unfair dismissal and dismissing the claims of age discrimination. The application may have been made prior to the formal promulgation of the Judgment in writing, but I consider that it nonetheless amounted to an application as the phrase 'reconsideration' was used. That application is contained in an email dated 13th September 2022.

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 application appears to seek to identify a different Respondent to the named Respondent in the proceedings. At the hearing, the Claimant's position, which was undoubtedly correct was that they were employed by Manchester Hall Limited.

8. The fact that Mr Cliff was not correctly named as a Respondent was dealt with at an earlier stage in the case management of the proceedings. There was no ACAS Early Conciliation certificate against Mr Cliff. There was no appeal or other challenge to the earlier decision that Manchester Hall Limited was the party that had been named on the ET 1.

9. In terms of Zorba Limited, this Respondent has not been named as a party in proceedings. It is too late to seek to name a new Respondent after the Judgment has been given. Parties are required to undertake the necessary research when commencing litigation.

10. Alternatively, if this application is to be treated as an application to adduce fresh evidence, that too is rejected. An important element of the fresh evidence test is whether with reasonable diligence, the evidence was available to the parties prior to the hearing. There is nothing contained within the application that

CASE NUMBER: 2414920/2021, 2414921/2021 & 2414922/2022

was not available with reasonable diligence to the parties prior to the hearing.

Conclusion

11. Having considered all the points made by the claimants 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 Anderson
DATE 15th September 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
15 September 2022

FOR THE TRIBUNAL OFFICE