



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4110531/2021

Hearing held remotely (at Glasgow) on 15 September 2022

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Employment Judge D Hoey  
Members: F Paton and S Keir

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Mr L Ramos

Claimant  
Represented by:  
Himself

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Lady Coco Ltd Trading as  
Shamela's Fresh Hot and Cold Food

Respondent  
Represented by:  
Ms Yeo  
(Director)

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The claimant's application dated 14 and 15 September 2022 which is considered to amount to an application for reconsideration of the oral judgment issued to the parties on 14 September 2021 is refused, there being no reasonable prospects of the judgment being revoked.

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### REASONS

#### Background

1. I have undertaken a preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claim.

2. At a final hearing on 14 September 2022 having heard parties' evidence and submissions the Employment Tribunal issued an oral judgment dismissing the claim.

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3. The Tribunal had found as a fact that the claimant had no genuine intention of applying for the role in question. The Tribunal concluded that the claimant did not wish to move to Scotland and had made no effort to consider such a move. He had seen the advert, which was discriminatory, and knowing the law, sought to secure money from the respondent via the Tribunal process.

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4. The claimant is an articulate, intelligent and capable individual. He has a masters degree (and certificate in accountancy) and works as a self employed interpreter and has worked in market research. He last worked in hospitality in 1990. He stays in Hounslow. He applied for no other jobs in Scotland (before or after the advert in question). He said he wished to move due to the cost of living being better in Scotland and the advert having referred to there being a beautiful park in Ruchill, and that it was a beautiful place.

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5. The claimant did not in fact apply for the role. He saw the advert and raised a claim for unlawful discrimination given its reference to "female takeaway staff needed" (albeit the advert later refers to "he/she"). The claimant did not contact the respondent prior to raising proceedings. He argued he was deterred from doing so because of the advert said "female takeaway staff needed" and he was male. He said he believed the advert was fake in any event. He said he did not want to enter into an argument with the respondent and so did not apply. He had presented research which he said evidenced these issues.

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6. The Tribunal found that the claimant had no intention of applying for the role.

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He had not worked in hospitality for many years. He had not applied for any other roles in Scotland. He was clearly capable of presenting his position and advancing his rights. His approach in setting out his claim in writing and orally demonstrated that. The Tribunal concluded that the claimant was in no way deterred from applying for the role whatsoever. The claimant chose not to apply as he did not wish to apply. His sole purpose in raising the claim was because he wished to secure money from the respondent having seen that the advert was unlawful.

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10 7. The Tribunal found that the claimant had carried out the research and reached a view in relation to the explanation for not applying following his decision not to apply for the role. The Tribunal did not accept that the fact the claimant believed the advert to be fake or the fact it had said “female takeaway staff” were to any extent a reason for his decision not to apply. The Tribunal did not accept a reason for his decision not to apply was the fact he did not wish to enter into an argument or discussion. The Tribunal found as a fact from the evidence presented that the claimant made a choice not to apply for the role, having been capable of doing so, if he wished to apply for it.

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20 8. The Tribunal took into account the full terms of the advert. The advert stated that the location was “near the beautiful area of Ruchill park”. In reaching its decision that the claimant had no genuine desire to move to Scotland the Tribunal took account of the fact that the claimant had made no effort to undertake any research as to the area whatsoever. He stayed in London and had made no effort to look for work in Scotland before or after. He had no connection with Scotland and little funds to allow him to move his life to Scotland. The Tribunal did take into account the difference in cost of living (which was better in Scotland) but found the claimant to be evasive and lacking in candour. The better cost of living was not a reason as a fact in this case for the claimant wishing to move to Scotland. He did not wish to do so.

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9. Had the claimant wished to apply for the role he was clearly capable of doing so and clearly capable of setting his position out. He did not do so because he had no intention of applying for the role.

5 10. The Tribunal considered all the documents submitted by the claimant, including his witness statement, background material and submissions, in addition to his oral evidence. The Tribunal did not find the claimant to be credible or reliable. The Tribunal unanimously found that the only purpose of the claimant raising the claims was to seek money from the respondent, him  
10 having no genuine desire whatsoever to apply for the role. On that basis the claim was dismissed. The oral judgment that was issued made the Tribunal's findings and reasons clear, including that it had expressly considered each of the claimant's reasons and all his material.

15 11. At the Hearing today the claimant had submitted an 8 page document which stated (for example at paragraphs 5 to 8) that matters had been overlooked in reaching its decision. At the commencement of the Hearing today the claimant was told that this would be considered as a reconsideration application in terms of rule 71.

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12. In terms of rule 72(1) an Employment Judge shall consider the application and if it is decided that there are no reasonable prospects of the original decision being varied or revoked, the application shall be refused.

25 13. As explained to the claimant above, the Tribunal took full account of the material provided by the claimant, including the issues he argues were overlooked. The Tribunal was unanimous in the view that the claimant had no genuine desire to apply for the role. He saw the unlawful advertisement and sought to use that as a way to seek money from the respondent.

14. 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).
- 5 15. 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.
16. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and another [2016] EWCA Civ 714** in July 2016 where  
10 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  
15 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.”**
17. Similarly, in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the  
20 Employment Appeal Tribunal 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  
25 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.”**

18. 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. It is also important to recognise that fairness and justice applies to both parties – the claimant and the respondent.

### **The application**

19. As set out above each of the points the claimant says were not considered were fully considered by the Tribunal. The Tribunal took full account of all the material lodged by the claimant. Ultimately the Tribunal found the claimant not to be credible or reliable. As a fact the Tribunal found that he had no genuine desire to apply for the role. On that basis the claim was dismissed.

### **Not in the interests of justice to allow reconsideration**

20. The points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination having considered the facts presented during the hearing and applied the law. 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.

21. That broad principle disposes of all the points made by the claimant. There is no evidence that shows the Tribunal has missed something important or that new evidence is being presented that could not reasonable have been put

forward at the time. The claimant was given a fair opportunity to present his case. Each of the points he made and the evidence he presented was fully considered.

- 5 22. The Hearing concluded and the judgment was issued on the basis of the information before it with both parties having been given a fair opportunity to present their case and hear each other's submissions and present any response.

### **Conclusion**

- 10 23. I considered the overriding objecting in reaching my decision to ensure the decision taken was fair and just. That applies to both the claimant and the respondent since justice requires to be achieved for both parties. I have done so carefully.

- 15 24. 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 raised were fully considered and addressed in reaching its unanimous decision. It is not in the interests of justice to reconsider the decision the Tribunal reached.

- 20 25. The application for reconsideration is therefore refused under rule 72(1) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

25 Employment Judge: David Hoey  
Date of Judgment: 15 September 2022  
Entered in register: 20 September 2022  
and copied to parties