EMPLOYMENT TRIBUNALS

Claimant: Mr J F Edwards

Respondents: 1. Unite the Union
2. Ms J Formby
3. Ms G Cartmail
4. Mr L McCluskey

JUDGMENT

The claimant's application dated 1 August 2022 for reconsideration of the judgment sent to the parties on 4 May 2020 is refused.

REASONS

1. The application for reconsideration was made long after the period of 14 days of the date on which the judgment and reasons was sent to the parties. The judge has a discretion, under rule 5 of the Employment Tribunals Rules of Procedure 2013, to extend time. The judge notes that the claimant relies on evidence which he says only came to his attention on 23 July 2022. In these circumstances, the judge has decided to extend time to allow the consideration provided for by rule 72(1) to be undertaken.

2. The judge has concluded that there is no reasonable prospect of the original decision being varied or revoked on the basis of the "new" evidence for the following reasons. References to paragraph numbers are, unless otherwise stated, to paragraphs in the Tribunal's reasons sent to the parties on 4 May 2020.

3. The "new" evidence relied on is a draft letter to the claimant from Slater and Gordon dated 2 August 2018 (at page 7 of documents accompanying the claimant's application for reconsideration). The claimant says this document should have been disclosed to him during the Tribunal proceedings leading to the decision of the Tribunal chaired by Employment Judge Slater but was not. The judge has made her decision on the reconsideration application on the assumption (without deciding) that the claimant is correct that there was a failure of disclosure. The letter received by the claimant from Slater and Gordon on or around 2 August 2018, dated 2 August 2018, is the letter at page 8 of the documents accompanying the claimant's application for reconsideration ("the

second letter"). The judge also makes her decision on the assumption (without deciding) that Slater and Gordon were influenced to change their draft letter by the respondent, to the form that was sent to the claimant dated 2 August 2018.

4. The claimant asserts in his application that the first draft of the letter followed counsel's advice but was not sent to the claimant. By implication, the claimant appears to be suggesting that the letter sent, after input from the respondent, did not follow counsel's advice, denying the claimant the opportunity to elect to lead with the employment tribunal proceedings or the personal injury claim.

5. The judge has considered counsel's advice (which appears at pages 9 to 22 of the documents accompanying the application) and the two versions of the letter dated 2 August 2018. The judge considers that the second version of the letter correctly reflects counsel's advice. Counsel's advice is clear in recommending that the claimant should lead with the employment tribunal proceedings (see paragraphs 3 and 46 in particular) and that, if this is done, Part 8 protective proceedings should be issued in the county court together with an application to stay the proceedings pending the outcome of his employment tribunal claims. The differences between the two letters are matters of structure rather than substance, with the exception that the second letter informs the claimant that, if he does not accept counsel's advice, Unite will not support his personal injury claims and he would be invited to seek alternative legal representation on private client terms.

6. The second letter is consistent with other documents before the Tribunal when it made its decision.

7. The second letter is consistent with information the claimant had previously been provided with about the provision of legal advice and/or representation being discretionary (paragraph 254). It is consistent with a letter from Mr Gillam of the respondent dated 5 July 2018 that counsel's advice was very clear that court proceedings should be stayed pending the conclusion of employment tribunal proceedings (paragraph 319). It is consistent with a subsequent letter from Mr Lemon of the respondent dated 3 August 2018 that, tactically, counsel was advising leading with the employment tribunal claim and staying the personal injury claim and that Unite would support the claimant's claims on that basis and would not, if the claimant chose, against counsel's advice, to lead with the personal injury claim and stay the employment tribunal claims.

8. The claimant has not identified the relevant paragraphs of the Tribunal's findings of fact and conclusions which he suggests might have been different had the Tribunal seen the "new" evidence at the time it was making its decision.

9. The claimant suggests that the Tribunal erred when it decided that the claimant was in breach of the retainer based on evidence disclosed by the respondent (paragraph 8 of the claimant's letter of 1 August 2022) but does not identify any relevant paragraphs of the Tribunal's decision. The judge considers it possible that the claimant may be referring to parts of the decision where the Tribunal noted that the claimant unilaterally terminated his retainer with Slater and Gordon without the agreement of Unite (rather finding that the claimant was in breach of his retainer) and concluded that legal assistance was not provided

after 24 October 2018 because the claimant had unilaterally terminated his retainer e.g. paragraphs 383-384, 589, 595 and 814. If this is what the claimant was referring to, the judge considers there is no reasonable prospect that those parts of the decision would be varied or revoked in the light of the "new" evidence.

10. The judge has considered generally the findings of fact made by the Tribunal and the conclusions reached. The judge concludes that there is no reasonable prospect that the contents of the draft letter of 2 August 2018, compared with the letter sent and dated 2 August 2018, would lead the Tribunal to vary or revoke its decision sent to the parties on 4 May 2020. The contents of the "new" evidence letter are of no real significance. There is no reasonable prospect of the Tribunal concluding from a failure to disclose one letter of no real significance that the respondent is likely to have deliberately concealed other evidence of much greater significance. The judge concludes that there is no reasonable prospect of the Tribunal drawing inferences from a failure to disclose this letter (if there is such a failure) which would lead the Tribunal to vary or revoke its decision.

11. For these reasons, the judge dismisses the application for reconsideration on the grounds that there is no reasonable prospect of the original decision being varied or revoked.

12. The claimant also refers in his letter to an application to strike out the response in these proceedings on the grounds of the respondents failing to disclose evidence or mention relevant facts in their statements and thus mislead the employment tribunal. The claimant relies on the same "new" evidence in relation to this application. The Tribunal cannot consider striking out a response once proceedings have concluded and a decision been reached on the claims. Striking out the response would only become a possibility if the Tribunal's judgment was revoked on reconsideration or overturned on appeal. The judge has refused the application for reconsideration for the reasons given.

13. The judge has seen the claimant's letter of 6 September 2022. To the extent that the claimant is seeking to reopen case management decisions made by judges earlier in the proceedings, this is not a matter to be dealt with by Employment Judge Slater when considering the application to reconsider the Tribunal's judgment sent to the parties on 4 May 2020. A separate reply will be sent to the claimant to his letter of 6 September 2022.

Employment Judge Slater

Date: 6 October 2022

JUDGMENT SENT TO THE PARTIES ON

20 October 2022

FOR THE TRIBUNAL OFFICE