EMPLOYMENT TRIBUNALS

Claimant: Mr D Smith

Respondent: Warrens Warehousing & Distribution (Midlands) Limited

JUDGMENT

The claimant's application dated 28 September and 13 October 2022 for reconsideration of the judgment sent to the parties on 28 September 2022 is refused.

REASONS

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

2. The claimant made his application initially by a 5-page email dated 28 September 2022 (around 5 hours after the Reserved Judgment was sent to the parties). The claimant indicated that a "detailed" application would be lodged thereafter. By email dated 13 October 2022 the claimant submitted a further 69-page document, headed as an "Appeal".

3. It is a matter for the claimant whether he also wants to appeal to the Employment Appeal Tribunal against the decision reached by the panel I chaired. I have considered both documents as forming the basis of his application for reconsideration.

The Law

4. 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. 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.
6. 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."

7. 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."

8. 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

9. The majority of 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. Alternatively, they are attempts to re-argue legal propositions which were debated in submissions and on which the Tribunal reached conclusions having heard the position of both sides. Further, the claimant raises numerous points/arguments which he failed to raise at the hearing, either by way of questioning or in submissions.

10. All these points 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.

11. So far as I can discern, there is nothing in the lengthy grounds of application which suggests to me that the Tribunal has missed an important point, nor that new evidence has become available which would not have been available at the time of the hearing. The claimant disagrees with our decision and wishes to re-argue the case, but that is not a legitimate ground for reconsideration of the Judgment.

12. Given the lengthy of the claimant's documents, I do not consider it necessary or proportionate to discuss in this Judgment the individual points made in the application.

Conclusion

13. 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 of significance were considered and addressed at the hearing. The application for reconsideration is refused.

Employment Judge Dunlop

DATE 21 October 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

24 October 2022

FOR THE TRIBUNAL OFFICE