



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr I Sesay

v

Metroline West Limited

Heard at: Watford Tribunal

On: 6-8 June 2022

Before: Employment Judge Smeaton, Mr Surrey, Mr Chapman

Appearances

For the Claimant: In person

For the Respondent: Ms Nicolaou (solicitor)

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The Claimant's application dated 20 June 2022 for reconsideration of the judgment dated 14 June 2022 dismissing the claims for unfair dismissal, direct race discrimination and unfair dismissal, is refused. There are no reasonable prospects of the judgment being varied or revoked.
2. The judgment is confirmed.

REASONS

3. By rule 70 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") the Employment Tribunal may reconsider a judgment where it is necessary in the interests of justice to do so. On reconsideration, the judgment may be confirmed, varied or revoked.
4. An application for reconsideration shall be presented in writing (and copied to all other parties) within 14 days of the date upon which the written record of the original decision was sent to the parties. In this case the written record was the judgment and reasons dated 14 June 2022, which was sent to the parties on 24 June 2022. The Claimant made a request for written reasons and reconsideration on the basis of the judgment delivered orally at the end of the hearing on 8 June 2022.

5. Under rule 70 of the Rules, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.
6. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the judgment being varied or revoked. This is a reviewing function (rule 72 of the Rules). Reconsideration cannot be ordered simply because the applicant disagrees with the judgment.
7. If the Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the Judge shall send a notice to the parties setting a time limit for any response to the application by the other party and seeking the views of the parties on whether the application can be determined without a hearing (rule 72 of the Rules).
8. My role, upon considering the application upon the papers initially, is therefore to operate as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be the subject of a reconsideration hearing.
9. On 20 June 2022, the Claimant sent an email to the Employment Tribunal seeking written reasons for the judgment delivered orally on 8 June 2022 and applying for reconsideration. That application was presented within the relevant time limit provided for in the Rules.
10. Having considered the application, I am satisfied that there is no reasonable prospect of the decision being revoked or varied. It is not necessary in the interests of justice to reconsider the Judgment. Accordingly, the Claimant's application for reconsideration fails and is dismissed.
11. The Claimant's application for reconsideration was based on the following:
 - (a) An allegation that I was biased, in effect acting as a second solicitor for the Respondent by restricting the issues to be determined, providing the Respondent's witnesses with the opportunity to explain their answers rather than restricting them to yes and no answers, and stating that I would stop listening and writing when the Claimant was speaking
 - (b) An allegation that Mr Ricketts, one of the Respondent's witnesses and the dismissing officer, lied under oath when he stated that the audio recordings and CCTV requested by the Claimant had been overridden
 - (c) An allegation that Mr Proverbs, a service controller who suspended the Claimant following an incident that ultimately led to the imposition of a final written warning ("the First Incident"), had given contradictory accounts of what took place that day

- (d) An allegation that the Tribunal was wrong to find that the Claimant was not treated differently to white comparators when he was suspended in respect of the First Incident
 - (e) An allegation that the Claimant was suspended following the incident on 26 November 2020 (“the Second Incident”) at the instigation of Mr Faichney, the Area Operations Director, because he had raised grievances
 - (f) An allegation that it is discriminatory to rely on the way the Claimant talked or used his hands when considering whether he behaved aggressively because, as a man of African background, he speaks with passion and uses hand gestures a lot
 - (g) An allegation that the Tribunal is corrupt
 - (h) An allegation that the CCTV and audio had been misinterpreted by the Tribunal.
12. At the outset of the substantive hearing, the Tribunal agreed the issues to be determined with the parties. On the second day of the hearing, Mr Sesay indicated that he also considered the acts of suspension to be acts of direct discrimination. Far from restricting the issues to be determined, the Tribunal accepted that those allegations would be considered and proceeded to consider them substantively.
13. At certain points during his questioning the Claimant insisted on yes or no answers from the Respondent’s witnesses. I intervened to explain that the Respondent’s witnesses ought to be given the opportunity to explain their answers. That was entirely appropriate and the Claimant was afforded the same opportunity.
14. At times during his evidence, it was necessary for me to explain to the Claimant that he was speaking too fast and that the Tribunal was unable to make a record of what he was saying. I explained to the Claimant that his evidence was important and that if the Tribunal couldn’t follow it crucial points may be missed. I advised him to slow down and stick to the questions asked. Far from evidencing bias treatment, this was an attempt to ensure the Claimant’s evidence was heard and recorded.
15. No grounds have been identified which would be sufficient to create in the mind of the fair-minded and informed objective observer a doubt about the Tribunal’s impartiality.
16. The remainder of the allegations are no more than an attempt to re-litigate matters which the Tribunal has already decided and to challenge findings of fact which were reasonably open to the Tribunal.
17. Accordingly the application for reconsideration is refused.

Case number: 3300965/2021

Date: 7 July 2022

Judgment sent to the parties on

15 September 2022

GDJ

For the Tribunal office