



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100013/2022

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Held in Chambers on 1 November 2022

Employment Judge Smith

10	Mr Charles Stewart Spence	Claimant Not required to attend
15	North Lanarkshire Council	Respondent Not required to attend

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Claimant's application for reconsideration of the Tribunal's judgment of 4 October 2022 (sent to the parties on 12 October 2022) is refused under **rules 70** and **72(1)** of the **Employment Tribunal Rules** as the Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked.

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REASONS

1. The Claimant's application for reconsideration is based upon two assertions as to the reasons why his claim was struck out under rule 37:
 - a. That he did not have his brother as a witness to the letter that was sent to the Employment Tribunal; and,
 - 30 b. That he did not possess any medical evidence in a joint bundle and that as a result the claim was struck out due to the lapse of time.
2. Neither of the Claimant's assertions were in fact the reasons why the claim was struck out. In summary form, the reasons why the claim was struck out was because the Claimant was prepared to, and did, send a document (a

purported letter from his GP) to another party to the proceedings and to the Employment Tribunal in the full knowledge that the document was fabricated and that he intended to rely upon it in relation to critical issues in the case. The result was that the Tribunal concluded the Claimant had behaved scandalously, vexatiously and unreasonably in conducting the proceedings, that trust in him had been destroyed, and that a fair trial was no longer possible.

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3. The question of whom to call as a witness in opposition to the Respondent's strikeout application was always a matter for the Claimant. If he had wished to call his brother, he could have done. In any event, the Tribunal accepted that the Claimant was not the author of the fake document and found as a fact that his brother was. From the perspective of the strikeout application the important finding in respect of the Claimant was that he was a knowing participant in the enterprise, in seeking to rely upon that document. That finding would not have been affected by any evidence the Claimant's brother could have given as his brother was, on the evidence, not involved in sending the document in question to the Respondent and to the Tribunal despite being its author. In any event, such evidence that the Claimant's brother could have given was reasonably available to the Claimant at the time of the preliminary hearing and it is not a matter that can justifiably be reopened now.

4. As to the medical evidence point, it was not suggested that the Claimant's health caused him to seek to rely upon the fake document in these proceedings. His evidence was that he did not know about the fake document and sent it on in error. The Tribunal's finding, however, was to the contrary: I found that the Claimant knew about the fake document and yet still sought to rely upon it in these proceedings. It was no mistake. Whilst the Tribunal must naturally treat any document purporting to be from one of the Claimant's treating medical practitioners with great caution given the findings made in relation to his conduct, even if such documents were taken at face value they would have had no impact on the outcome of the strikeout application given this crucial finding. Further, even if the Respondent was disinclined to include such documents in a joint bundle (of which I make no finding one way or the

other) it remained open to the Claimant to introduce those documents in his evidence at the preliminary hearing, if he so wished. As they all appear to pre-date the preliminary hearing they were, in any event, documents that were available to him at the time and it is not justifiable to seek to introduce them now, after the event.

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5. For these reasons the Claimant's application for reconsideration is refused. I consider there is no reasonable prospect of the original decision being varied or revoked.

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Employment Judge: P Smith
Date of Judgment: 2 November 2022
Entered in register: 3 November 2022
and copied to parties