



EMPLOYMENT TRIBUNALS

Claimant: Mr D Foster
Respondent: South Yorkshire Housing Association
Heard at Sheffield (on the papers) On: 8 July 2022

Before: Employment Judge Brain

JUDGMENT ON RECONSIDERATION

The Judgment of the Employment Tribunal is that there is no reasonable prospect of the Judgment promulgated on 7 June 2022 being varied or revoked. Accordingly, the claimant's application for reconsideration fails and stands dismissed.

REASONS

1. The Employment Tribunal promulgated a Reserved Judgment in this case on 7 June 2022. (I shall refer to the Reserved Judgment as "*the Judgment*").
2. On 20 June 2022 the Tribunal received an application from the claimant for reconsideration of the Judgment.
3. Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides an Employment Tribunal with a general power to reconsider any judgment where it is necessary in the interests of justice to do so. The power can be exercised either of the Tribunal's own motion or on the application of a party. Rules 71 to 73 set out the procedure by which the power is to be exercised.
4. Rule 70 provides a single ground for reconsideration. That ground is where it is necessary to do so in the interests of justice.
5. This does not mean that in every case where a litigant is unsuccessful, they are automatically entitled to reconsideration. Instead, a Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly and the Tribunal should be guided by the common law principles of natural justice and fairness. Tribunals have a broad discretion but that must be exercised judicially, which means having regard not only to the interests of the parties seeking the reconsideration but

also the interests of the other party to the litigation and the public interest in the finality of litigation.

6. An application for reconsideration must be presented in writing and copied to all other parties within 14 days of the date upon which the written record of the decision which is the subject of the reconsideration application was sent to the parties. In this case, the Judgment was promulgated on 7 June 2022. The time limit for making the reconsideration application expired on 22 June 2022. (7 June 2022 does not count in the reckoning of the 14 days' time limit). The Tribunal received the claimant's application just before midnight on 20 June 2022. The claimant therefore made the application to the Tribunal in time.
7. The claimant appears not to have sent a copy of the reconsideration application to the respondent. However, this does not render the reconsideration application a nullity. By Rule 6, a failure to comply with any of the provisions of the Tribunal's Rules does not render void any step taken in the proceedings. The Tribunal has the power to waive or vary such a requirement. I exercise that power in this case as I consider that I am able to deal with the reconsideration application without any input from the respondent.
8. Rule 72 sets out the procedure that an Employment Tribunal must follow upon receipt of an application for reconsideration. Firstly, the application is put before the Employment Judge who decided the case (or who chaired the panel hearing the case if the hearing was before a full panel). This case was heard before me alone. I must therefore decide whether there is no reasonable prospect of the Judgment being varied or revoked. If I do so decide, then the application will be refused.
9. If I am not satisfied that there is no reasonable prospect of the Judgment being varied or revoked, then the procedure is for the Tribunal to send a notice to the parties setting a time limit for any response to the application by the other party and seeking the parties' views on whether the application can be determined without a hearing. The matter may then be decided on paper or proceed to a reconsideration hearing.
10. Rule 70 provides the Tribunal with a general power to reconsider any judgment where necessary in the interests of justice to do so. A judgment is defined in Rule 1(3)(b) as a decision made at any stage of the proceedings which (amongst other things) finally determines the claim. It is not open to a party to seek reconsideration of the reasons for a judgment (as opposed to the judgment itself). An application for reconsideration can only be entertained by the Tribunal for the end of varying or revoking a judgment.
11. Much of the claimant's reconsideration application takes issue with some of the Tribunal's factual findings. The claimant has carefully considered the Judgment and has raised factual issues upon many of the paragraphs in the reasons for the Judgment.
12. The difficulty for the claimant is that at no stage has he addressed why it is in the interests of justice to vary or revoke the Judgment (as opposed to the reasons for it). I am satisfied that the factual findings that I made were open to me upon the basis of the evidence which I heard. I am also satisfied that I

applied the law correctly to arrive at the conclusion that both the unfair dismissal and the wrongful dismissal claims should fail and stand dismissed.

13. Accordingly, it is unnecessary for me to deal with each of the claimant's assertions about the findings of fact. It is simply not proportionate for me to embark upon this exercise.
14. The Tribunal has made permissible factual findings upon the basis of the evidence presented to me at the hearing. The relevant law was then applied to those factual findings to arrive at the conclusions upon the issues identified by Employment Judge Wade when she conducted a case management hearing on 8 September 2021. Nothing said by the claimant in his reconsideration application persuades me that it cannot be said that there is no reasonable prospect of the claimant prevailing upon the Tribunal at a reconsideration hearing that any of the actual findings were perverse or incorrect such that the conclusions which I reached upon the substantive issues were incorrect so as to render the Judgment liable to variation or revocation.
15. In summary, I am satisfied that there is no reasonable prospect of the Judgment being varied or revoked. The reconsideration application therefore stands dismissed.

Employment Judge Brain

Date: 15 July 2022

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