



EMPLOYMENT TRIBUNALS

Claimant **Mr K Matusiak**

Respondents: **Centriforce Products Limited**
 Mr Stewart Lawrence

Reconsideration

The claimant's application dated 22 September for reconsideration of the Judgment sent to the parties on 9 May 2022, Written Reasons having been provided on 8 September 2022 is refused.

REASONS

The relevant law

1. Rule 70 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so.
2. Rule 71 provides that an application for reconsideration shall be presented in writing and copied to all the other parties within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision as necessary.
3. Rule 72 provides that an Employment Judge shall consider any application made under Rule 71. Where practicable the consideration shall be made by the Employment Judge who made the original decision or who chaired the full tribunal which made it. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused.

4. At tribunal dealing with an application for reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly contained within Rule 2 of the Regulations. This includes ensuring that the parties are an equal footing, dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding unnecessary formality and seeking flexibility in the proceedings, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense.
5. Consideration of whether reconsideration is “necessary in the interests of justice” allows the Tribunal a broad discretion which must be exercised judicially which means having regard not only to the interests of the party seeking the reconsideration but also to the interests of the other party to the litigation, and to the public interest requirement that there should be so far as possible finality in litigation.

Background to this application for reconsideration

6. The claimant’s claim for unfair dismissal and direct race discrimination came before the Tribunal sitting as a full panel on 25,26,27,28 and 29 April 2022.
7. The claimant was represented as was the respondent. The Tribunal heard oral evidence and each side made closing submissions. The claimant succeeded in his unfair dismissal complaint. His race discrimination complaint failed. The matter was to be listed for a remedy hearing but the parties indicated that a provisional settlement had been reached.
8. The claimant made an application for Written Reasons. Following receipt of the Written Reasons the claimant made an application for reconsideration on the 14th day after his receipt of them. EJ Aspinall considers, on reflection, that the application was made just in time

Application of the Law

9. The request for reconsideration is rejected on the ground that it is not necessary in the interests of justice as there is no reasonable prospect of the original decision being varied or revoked.
10. There is an underlying public policy principle in all proceedings of a judicial nature that there should be finality in litigation and reconsiderations are a limited exception to the general rule that judgements should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry. In *Stevenson v Golden Wonder Ltd 1977 IRLR 474, EAT*, Lord McDonald said review provisions were ‘not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before’.
11. It is my view that the claimant is seeking to have the evidence reheard. The letter of 22 September 2022 sets out the grounds for the application for reconsideration as follows:

The claimant’s representatives note of the oral judgment differs from the Written

Reasons; the claimant's evidence was preferred over the 2nd respondent's evidence on the consultation meetings point.

The Written Reasons are the definitive version of the Reasons for the oral judgment.

The consultation meetings point was heard, considered and the claimant succeeded in establishing that there had been no meaningful consultation, hence his success in unfair dismissal.

The alleged discriminator was rude and abrupt with the claimant and chatty and friendly with the claimant's English work colleagues...the claimant believes he has met the burden of proof in Section 136(2)

The Tribunal heard oral evidence on this point. It is addressed at paragraph 146 of the Reasons. The Tribunal found as a fact that Mr Lawrence was rude to the claimant but the claimant did not meet his burden of proof in establishing a prima facie case of discrimination. The claimant did not establish that the reason for Mr Lawrence's rude and abrupt manner was the claimant's nationality, the Tribunal found that Mr Lawrence had been rude to all colleagues. *It is not enough to say he was rude to me and because I am Polish, it must be because of my nationality.* This point and the allegations of race discrimination in relation to Mr Lawrence not greeting the claimant and the scoring for redundancy were the subject of closing submissions and are thoroughly reasoned, with the relevant law applied, at paragraphs 145 – 180 of the Written Reasons.

R2 then chose the claimant to be furloughed, and then selected the claimant for redundancy....

Full argument and evidence was heard at Tribunal as to the reasons for furlough and selection for redundancy. The claimant's reconsideration application refers to S136(2) Equality Act 2010 *if there are facts from which the court could decide, in the absence of any other explanation....* The Written Reasons set out the factual findings of the Tribunal and the application of the law on the burden of proof. The relevant authorities are cited in the Written Reasons. The claimant is seeking a rehearing of issues that have been determined.

12. In AIC Ltd v The Federal Airports Authority of Nigeria [2020] EWCA Civ 1585 the Court of Appeal provided guidance on the correct approach the courts should take when determining an application to reconsider. Coulson LJ held that there were two distinct questions which the court must ask itself.
13. The first was whether the application to reconsider should be entertained in principle; if the court answered the question in the negative, that was the end of the matter. Coulson LJ provided further guidance on first question when he said: 'In my view, the court should be looking for a sufficiently compelling reason that may justify reconsideration; something which might outweigh the importance of finality and justify the opening up of a question or questions which, following the pronouncement of the order in open court, appeared to have been finally answered...the court should instinctively be looking for something which has been missed or otherwise gone awry: a mistake or a fundamental misapprehension; a fundamental piece of evidence or a point of law that was overlooked. The court's

undoubted jurisdiction to reconsider its earlier order cannot be permitted to become a gateway for a second round of wide-ranging debate.’

14. When considering an application to reconsider, the courts need to ensure that their jurisdiction must, as Coulson LJ put it, be ‘carefully patrolled’ so that the principle of finality in litigation is not undermined. The claimant’s application has not got over the first hurdle of providing a sufficiently compelling reason to justify reconsideration. Litigation requires finality and it is not in the interests of justice for the Tribunal to list this matter for a reconsideration hearing and the claimant’s application for a reconsideration is dismissed.

Employment Judge **Aspinall**
Date 15 November 2022

JUDGMENT SENT TO THE PARTIES ON
18 November 2022

FOR THE TRIBUNAL OFFICE