EMPLOYMENT TRIBUNALS

Claimant: **Mr M Bond**

Respondent: **(1) Welshpool Town Council**
(2) Mr R Robinson

RECONSIDERATION DECISION

The claimant's applications dated 12 July 2022 and 16 September 2022 for reconsideration of our Liability Judgment sent to the parties on 29 June 2022 is refused.

REASONS

The reconsideration applications

1. I have undertaken a preliminary consideration of the claimant's applications for reconsideration of the liability judgment.

The law

2. An application for reconsideration is an exception to the general principle that (subject to an 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).

3. Under Rule 71 an application for reconsideration has to be made within 14 days of the date on which the written reasons were sent. Rules 71 and 72 do not give an express power to extend time, however, Rule 5 provides a general power to extend any time limit in the Rules.

4. Under Rule 72(1) I may refuse an application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

5. The importance of finality was confirmed by the Court of Appeal in Ministry of Justice v Burton and anor [2016] EWCA Civ 714 where it was said:

> *"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."*

6. Similarly in Liddington v 2Gether NHS Foundation Trust EAT/0002/16 the Employment Appeal Tribunal said:

> *"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or 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."*

7. Under Rule 61 a Tribunal may either announce its decision in relation to any issue at the hearing or reserve it to be sent to the parties as soon as practicable in writing. Rule 62(1) provides that the Tribunal shall give reasons for its decision on any disputed issue, whether substantive or procedural and in the case of a decision in writing, the reasons shall also be given in writing. Under Rule 62(5) in the specific case of a Judgment, the reasons shall: "*identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues."*

8. As the Court of Appeal recently reiterated in *Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601*, the point of the rule, in relation to Judgments, is to enable the parties to know why they have won or lost. The

Court of Appeal re-stated the classic observation from *Meek v City of Birmingham District Council* [1987] IRLR 250:

"The duty of an industrial tribunal is to give reasons for its decision. This involves making findings of fact and answering a question or questions of law. So far as the findings of fact are concerned, it is helpful to the parties to give some explanation of them, but it is not obligatory. So far as the questions of law are concerned, the reasons should show expressly or by implication what were the questions to which the industrial tribunal addressed its mind and why it reached the conclusions which it did, but the way in which it does so is entirely a matter for the industrial tribunal."

Decision

9. The reasons for my decision are as follows.

Reconsideration Application of 12 July 2022

10. This reconsideration application was made within time. The claimant, in essence, says that the Tribunal should found as a matter of fact that from 1 March and/or 19 March 2019 (rather than from 23 April 2019) the second respondent was materially influenced by fear of the claimant exposing the situation with the town hall fire alarm. He submits that, in turn, we should have found that the second respondent encouraged or influenced employees to raise false or exaggerated allegations against the claimant (and that they did so). In turn he, in effect, seeks to get findings of fact about the claimant's own workplace relationships overturned, including those which have led to adverse publicity about the claimant.

11. Firstly, to clarify one point raised by the claimant about paragraph 74 of the Liability Judgment, we did not find that at that point in time the second respondent had no knowledge of problems with town hall fire alarm. We found the second respondent knew about the problems before the claimant started working for the first respondent (paragraphs 52 through to 58). What we found was that at that point in time this was not influencing how the second respondent was behaving in relation to the claimant. We found that at that point in time the second respondent had not reached the point of being concerned about the *claimant,* in particular, exposing the situation. We found that following the claimant's first protected disclosure of 23 April the second respondent had become materially influenced by that protected disclosure in how (in summary form) he dealt with the claimant and the claimant's employment, in conjunction to other factors that were at play (paragraphs 104, 110, 111 and 237). In particular the claimant's working relationship with the second respondent and other members of staff.

12. The claimant is seeking to unpick that entire analysis that underpins much of our findings in this case. They are findings of fact that are carefully reasoned in extensive detail in the reserved judgment based on all the evidence put before us. The claimant is disputing how the evidence before us has been evaluated and/or applied. The claimant at times also tries to put forward new information or evidence not before us at the hearing.
These are all not matters suitable for a reconsideration application. As set out above, even where a case is presented by a litigant in person, a reconsideration application is not an opportunity to seek to relitigate matters that have already been relitigated or reargue matters in a different way, or adopt points previously omitted. To try to do so offends against the very important principle of finality in litigation.

13. Moreover, the claimant would be asking us to make findings of fact against employees of the First Respondent on a basis that was to a significant extent never put to those witnesses in cross examination.

14. Furthermore, the alternative findings the claimant is asking us to make do not actually affect the outcome in the Liability Judgment. He is not seeking to add additional, earlier protected disclosures, and as such the detriments which were unsuccessful could never be upheld. The claimant is simply trying to substitute findings of fact which are more favourable to him. The written Liability Judgment complies with Rules 61 and 62 and the underlying legal principles relating to the provision of reasons. The written Judgment clearly identifies the issues which were determined (following the List of Issues) and sets out the Tribunal's decision in relation to the particular complaints the claimant brought, and the reasons why he won or lost. The claimant is seeking alternative findings of fact he would like to being expressly made and recorded, as opposed to varying the actual decision reached on the heads of claim. On a human level, I can understand the claimant's concerns about the focus of the press attention. However, principles of open justice, freedom of speech and the freedom of the press are part of the bedrock of our legal system. To seek to vary a Judgment on the basis the claimant seeks to vary it does not therefore, in my opinion, accord with the purpose of a reconsideration application. Fundamentally, in any event, to come full circle, the findings of fact we made, some positive for the claimant, and some that were not, were our very carefully considered findings on the totality of the evidence put before us.

Reconsideration application of 16 September 2022

15. This further or extended reconsideration application was made out of time. I do not consider it to be in the interests of justice to extend time. The limited time given for a reconsideration application again reflects the need for finality in litigation. The claimant has referred to being signed off by his GP

but did not submit medical evidence in support of his application for an extension of time.

16. In any event, it strikes me that the maters the claimant seeks to raise would also be covered by the difficulties identified above in relation to his first reconsideration application. A reconsideration application is certainly not a way in which, in these kinds of circumstances, to achieve a complete rehearing of a case. The claimant as a litigant in person was given time and space in which to present his case and ask his questions of the respondent's witnesses. He was able to submit detailed written closing arguments, again at this request.

17. In summary, I am satisfied on the basis of what is before me that there is no reasonable prospect of our original decision being varied or revoked. The application for reconsideration is therefore refused.

_____

Employment Judge Harfield
Dated: 3 October 2022

JUDGMENT SENT TO THE PARTIES ON 4 October 2022

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche