EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4110531/2021

Held in Glasgow on 23 November 2022

Employment Judge D Hoey

Mr L Ramos **Claimant**

Lady Coco Ltd t/a

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant's application for reconsideration of the judgment issued to the parties on 21 September 2021 granting a preparation time order against the claimant is refused, there being no reasonable prospects of the judgment being revoked.

REASONS

Background

1. This case has a long procedural history, having been raised in 28 July 2021. A hearing took place on 14 and 15 September 2022, with the claim being dismissed. An oral judgment was issued with written reasons being provided upon request. A preparation time order was granted against the claimant, with an oral judgment being given on 15 September 2022 and written reasons provided to the parties upon the claimant's request.

2. The judgment finally determining the proceedings was sent to the parties on 16 September 2022 and A preparation time order was granted in the

respondent's favour. That judgment was sent to the parties on 21 September 2022.

3. On 10 November 2022 the claimant sent an email to the Tribunal with attachments. One of those attachments contains an application for reconsideration of the preparation time order that was granted against the claimant.

The grounds for the application

4. The claimant relied upon 12 grounds in support of his application which are considered below.

5. The **first ground** is that "as explained above my claim should not have been rejected". The Tribunal determined from the evidence that the claimant had no genuine desire to apply for the role, that he had acted vexatiously and his claim had no reasonable prospects of success. It was therefore necessary to dismiss his claim and make the preparation time order.

6. The **second ground** is that "the Respondent did not provide any breakdown of the work that it has done so the tribunal did not know the amount of this work." The respondent had sought an order for significantly greater time than that subsequently covered by the Order. The Tribunal took account of its knowledge of the case and was able to reach a fair and just decision in terms of the amount of time spent by the respondent in dealing with the issues. The way in which the claimant presented his case added to the amount of time taken by the respondent in dealing with each of the lengthy applications. The amount of time arrived at was fair and reasonable in light of the work the respondent had demonstrably done in defending the claim.

7. The **third ground** is that "it is based solely on me having allegedly lied on oath when during the hearing of the 14 and 15 September 2022 I say that I was interested on this position. However, as explained in paragraph 2 above the tribunal does not discharge the high standard of proof for perjury because he has not put forward any conclusive objective evidence which proves with certainty that I lied on oath on this occasion". As set out above the Tribunal

reached a decision on the facts and sets out its reasoning in detail for making the Order. The Tribunal reached a decision based on the evidence before it and nothing has been provided that suggested that decision should be revoked.

8. The **fourth ground** is that given the Tribunal accepted the standard of proof concerning vexatious litigants is very high "he has to be entirely sure that I was not interested in the position as confirmed in paragraph 14 and 17 of his judgment about the £697 preparation time order ". It is alleged the Tribunal engaged in "only subjective speculation". The Tribunal made a finding in fact from the evidence presented. The Tribunal gave clear reasons for the decisions it reached from the evidence before it.

9. The **fifth ground** is that "it is the Respondent who is responsible for having started the troubles and not me because it has posted an unlawful advert as accepted by the tribunal so it not fair to exonerate entirely the Respondent from any wrong and put all the blame on me." The claimant asserts that "It was legally and morally wrong to award its costs to a Respondent who breached UK laws". The Tribunal did consider this matter which the claimant raised during the Hearing. Nevertheless, the correct forum for raising discriminatory adverts (which advertise jobs for which the person seeing it is not interested) is the Equality and Human Rights Commission. It is not for the claimant to seek compensation himself via an Employment Tribunal where he had no genuine desire to apply for the role, even if the advert is discriminatory. The applicable law in respect of an application for expenses was considered and applied. The respondent was put to considerable cost to defend a claim that had no reasonable prospects of success and which had been conducted vexatiously. The issue as to costs was the conduct of the claimant in the context of this case which was considered.

10. The **sixth ground** is that the claimant says "thank to me that the Respondent stopped to discriminate again men. I should have been instead congratulated. Judge Hoey has not taken into account that the Respondent discriminate also again other men." The Tribunal explained why expenses were awarded against the claimant. It was open to him to contact the Equality and Human

Rights Commission or the respondent directly (to raise the issue as to the discriminatory advert). Proceeding to raise a claim and seek compensation for himself and put the respondent to considerable cost was not reasonable and the rules as to expenses were fully considered and applied. It was just to issue the order.

11. The **seventh ground** is that "no costs warning letter was sent". That was not a relevant consideration. The respondent, as the claimant knew, was not initially legally represented, and the claimant had considerable experience of the Tribunal process. The claimant knew of the Tribunal rules and the approach the Tribunal takes. The absence of a costs warning did not result in the claimant not satisfying the legal tests in respect of an expenses order being made. There is no suggestion that the issuing of a costs warning letter would have altered the position in any way.

12. The **eighth ground** was that the Tribunal "has played in the hands of the discriminator by letting it gets away with discrimination against me and other men and by punishing the victim who bravely came forward." The costs awarded to the respondent did not cover the full time they spent in defending this matter. The terms of the judgment, which is a public judgment, make it clear that the advert was unlawful. The rules pertaining to expenses were carefully considered and applied to the facts as found by the Tribunal.

13. The **ninth ground** is that "there is no evidence that I would have broken any law." The written reasons explain why the claimant's conduct was such as to justify the award that was issued. The claimant had raised proceedings and put the respondent to the efforts it did knowing his claim had no reasonable prospects of success and solely to seek money for himself. In all the circumstances from the evidence presented to the Tribunal the order that was issued was justified and no evidence has been presented to suggest the original decision should be revoked.

14. The **tenth ground** is that there was no "conclusive objective evidence which proves that I have done anything wrong deters victims of discrimination from coming forward and issuing a claim". The Tribunal applied the law in relation

to expenses carefully. Applicants who have a genuine desire to apply for such roles have a remedy. Applicants with no genuine desire to apply run the risk of expenses being awarded against them where the rules as to making such an award justify it.

15. The **eleventh ground** is that the award is said to be "an additional act of victimisation and persecution against me". There is no basis for such an assertion. The claim the claimant raised was case managed in the normal way. The order was made as a result of the claimant's actions in bringing the claim for the reasons set out having carefully applied the legal principles to the facts.

16. The **final ground** was that the respondent failed to produce the advert. The parties agreed that the Hearing would proceed on the basis of the advert produced by the claimant which was the terms of the advert on which his case was based (and had the wording which the respondent conceded had been used). There was no prejudice to the claimant whatsoever in proceeding to deal with the matter on the basis of the terms of the advert relied upon by the claimant.

No reasonable prospects

17. In terms of rule 72(1) an Employment Judge shall consider the application and if it is decided that there are no reasonable prospects of the original decision being varied or revoked, the application shall be refused.

18. The Tribunal carefully considered the law relating to preparation time orders and applied that to the facts it had found and the approach the claimant had taken. The Tribunal was unanimous in the view that the claimant that the claimant knew the claim had no reasonable prospects of success and that he had acted vexatiously. The claimant had no genuine desire to apply for the role. He saw the unlawful advertisement and sought to use that as a way to seek money from the respondent. The Tribunal reached its unanimous decision from the evidence before it and was satisfied, applying the legal principles, that it was fair and just to award the preparation time order it ordered.

The law

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

20. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

21. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and another [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

> **"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."**

22. Similarly, in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the Employment Appeal Tribunal chaired by Simler P said in paragraph 34 that:

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

23. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication. It is also important to recognise that fairness and justice applies to both parties – the claimant and the respondent.

The application

24. The claimant has presented no evidence or any basis as to why the decision reached has reasonable prospects of being revoked. The Tribunal took full account of all the material lodged by the claimant. Ultimately the Tribunal found the claimant not to be credible or reliable. As a fact the Tribunal found that he had no genuine desire to apply for the role from its careful assessment of the full factual matrix. The Tribunal was satisfied from the legal principles that it was just and reasonable to make the order it did from the evidence led.

Not in the interests of justice to allow reconsideration

25. The points raised by the claimant are attempts to re-open issues of fact on which the Tribunal considered prior to making its decision having applied the law. In that sense they represent a "second bite at the cherry" which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

26. That broad principle disposes of all the points made by the claimant. There is no evidence that shows the Tribunal has missed something important or that

new evidence is being presented that could not reasonable have been put forward at the time. The claimant was given a fair opportunity to present his case. Each of the points he made and the evidence he presented was fully considered.

27. The Hearing concluded and the judgment was issued on the basis of the information before it with both parties having been given a fair opportunity to present their case and hear each other's submissions and present any response.

Conclusion

28. I considered the overriding objecting in reaching my decision to ensure the decision taken was fair and just. That applies to both the claimant and the respondent since justice requires to be achieved for both parties. I have done so carefully.

29. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points raised were fully considered and addressed in reaching its unanimous decision. It is not in the interests of justice to reconsider the decision the Tribunal reached.

30. The application for reconsideration is therefore refused under rule 72(1) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Employment Judge: **D Hoey**
Date of Judgment: **24 November 2022**
Entered in register: **25 November 2022**
and copied to parties