Case Number: 3324269/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr P Baker	**v**	(1) Tallington Lakes Activities Limited; (2) Tallington Lakes Site Limited (3) Tallington Lakes Land Limited; (4) Neil Morgan

UPON THE RESPONDENTS' APPLICATION dated 21 July 2022 for reconsideration of the Costs Judgment dated 2 July 2022 (sent to the parties on 19 July 2022) under rule 71 of the Employment Tribunals Rules of Procedure 2013.

JUDGMENT on RECONSIDERATION APPLICATION

1. The Tribunal determines that a hearing is not necessary in the interests of justice.
2. The Respondents' reconsideration application is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons:

1. The Tribunal made a Costs Judgment on 2 July 2022 following a hearing on 29 June 2022. The Costs Judgment was sent to the parties on 19 July 2022. Mr Morgan submitted an application for reconsideration of that Judgment on 21 July 2022. His application was signed in his capacity as a Director of the First Respondent. I have treated it as an application on behalf of all four Respondents.

2. I invited the parties' representations as to whether the application necessitated a hearing. The Claimant has expressed the view that this would give rise to unnecessary time and cost. The Respondents have not expressed any views on the matter, though have submitted additional detailed comments in response to the Claimant's written submissions on the

application. I am satisfied that the interests of justice do not require that there is a hearing to determine the application and that I can deal with the matter fairly and justly on the strength of the parties' written submissions.

3. Rule 70 of the Employment Tribunal Rules of Procedure 2013 empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any Judgment where it is necessary in the interests of justice to do so. Rule 71 requires that any application for reconsideration must be presented in writing within 14 days of the date on which the written record, or other written communication, of the original decision is sent to the parties, or within 14 days of the date that the written reasons are sent (if later). The Respondents' application is plainly in time

4. The starting point clearly has to be the decision the Tribunal reached after the hearing on 29 June 2022. I have re-read it. I consider that I set out in detail the reasons for the Costs Judgment. Should these matters be examined on appeal, it would be for the Higher Tribunal to say whether those reasons and my decision can stand. The Respondents assert that my findings "are totally false", "provably false" and that the Judgment "must be changed to fit with the truth". Any suggestion that my findings were perverse or that I erred in Law is generally a matter for appeal.

Bias

5. The leading case on the test for bias is the House of Lords judgment in Porter v Magill 2002 2 AC 357, HL. The Respondents state that my findings are "deliberately contrived … created to meet a purpose. It is lately made-up lies". They have not sought to substantiate those assertions, which I treat as an assertion of bias. At the hearing on 29 June 2022 I declined to recuse myself from the proceedings; in so doing, I noted that Mr Morgan had asserted that I was biased and had effectively engineered a situation in which I could then make criticisms of him. Again, those assertions were essentially unsubstantiated. The Respondents evidently disagree with my findings and decision in relation to costs, but have not set out in any meaningful way why the Tribunal may have been biased against them. As I observed on 29 June 2022, it seems to me that Mr Morgan has a deeply entrenched belief that the Employment Tribunal system, including its Judges, are biased against employers and that, rather than an objective assessment, is informing his views.

6. Impartiality requires not only that the Tribunal is independent and free from actual bias but that it must also be free from apparent bias. In that regard, the Tribunal must consider whether the circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the Tribunal was biased. An informed hypothetical observer is someone in possession of the relevant facts and circumstances. I cannot discern from Mr Morgan's written submissions or otherwise identify any facts or matters from which a fair-minded and informed observer would conclude that there was a real possibility that the Tribunal was biased in arriving at its findings and conclusions.

Reconsideration

7. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals' powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. At paragraphs 27 – 38 of her Judgment Her Honour Judge Eady QC, as she then was, set out the legal principles which govern reconsideration applications, and observed,

> *"The interests of justice have thus long allowed for broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation."*

8. In Outasight, the Employment Appeal Tribunal was referred to the EAT's Judgment in Redding v EMI Leisure Ltd. EAT/262/81 in which the EAT had observed:

> *"…When you boil down what is said on* [the Claimant's] *behalf, it really comes to this: that she did not do herself justice at the hearing so justice requires that there should be a second hearing so that she may. Now, "justice" means justice to both parties. It is not said, and, as we see, cannot be said that any conduct of the case by the employers here caused [the Claimant] not to do herself justice. It was, we are afraid, her own experience in the situation…"*

9. The Respondents do not say in their application for reconsideration that they feel they did not do themselves justice on 29 June 2022, but if it is the case then it is not for want of being afforded a reasonable opportunity to state their position. As I noted at paragraph 6 of the Costs Judgment, they were on notice of the costs application from 7 February 2022 and accordingly had ample time to prepare for the 29 June 2022 hearing, including time to take legal advice or to research the issues for themselves if they did not wish to, or could not afford to, avail themselves of legal advice. As I noted at paragraph 6 of the Costs Judgment, Mr Morgan failed to make best use of the opportunities afforded by the hearing, using it instead as a platform to make unfounded allegations against Mr Varnam and his instructing solicitor. If, on reflection, Mr Morgan feels that he did not do the Respondents' case justice on 29 June 2022, he only has himself to blame in the matter. As I further observed at paragraph 9 of the Costs Judgment, Mr Morgan is evidently capable of making relevant points when he turns his mind to it. His reconsideration application reinforces the point: on the one hand, he makes certain points that he might have made, but failed to make, on 29 June 2022; on the other hand, he cannot resist directing further abusive comments at Mr Varnam and Mr Hyland, accusing them of "absolute lies and more total bollocks".

10. The Respondents' interests are not the only consideration here. Justice has to be done to both parties and there are broader policy considerations including the need for finality in litigation. Litigation has to be kept within sensible bounds. The Respondents were afforded a reasonable opportunity to make representations in response to the Claimant's application for costs and it is not necessary in the interests of justice that they should have a 'second bite at the cherry'.

11. Even if I had been minded to reconsider the Costs Judgment, I would not have been persuaded to vary or revoke it. In the Costs Judgment I identified that the Tribunal retains a discretion in relation to costs even where a party has behaved abusively, disruptively or otherwise unreasonably. A costs order does not automatically follow. I am satisfied that I correctly directed myself, and indeed I reminded the parties during the hearing, that I should have regard to the nature, gravity and effect of any relevant conduct, and that it is not necessary for the Tribunal to determine a precise causal link between the conduct in question and the costs being claimed. It is within the Tribunal's discretion to order a party to pay another party's costs even where these have not directly resulted from the conduct in question. In this case, the relevant egregious conduct was not limited to Mr Morgan's conduct at Tribunal in August 2020, but extended to the Respondents' conduct prior to the Final Hearing and in connection with the Remedy Hearing. I am satisfied that the Costs Judgment represents a fair and proportionate sanction in respect of the Respondent's abusive, disruptive and unreasonable conduct which I found did give rise to avoidable costs.

12. In all the circumstances the application for reconsideration is refused.

____

Employment Judge Tynan

Date: 29 November 2022

Sent to the parties on: 6 December 2022

For the Tribunal Office