# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Benson & others

**Respondent:** Carillion Services Limited (in liquidation) & others

# JUDGMENT

The claimant Mr Larkin's (case number: 2500848/2018) application dated 22 October 2022 for reconsideration of the judgment sent to the parties on 26 September 2022 is refused.

# REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claims. That application is contained in a 4 page document attached to an email dated 22 October 2022 I have also considered comments from the respondent dated 2 November 2022.

**The Law**

2. 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).

3. 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.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [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."**

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT 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."**

6. 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.

## The Application

7. The majority of the points raised by the claimant are attempts to re-open issues of fact on which the Tribunal heard evidence from both sides and made a determination. 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.

8. That broad principle disposes of almost all the points made by the claimant. However, there are some points he makes which should be addressed specifically.

9. The claimant wishes to apply for an order that the decision does not apply to him in relation to Exit Pathway 5 (redundancy – no work available, lead claimant Ireland, Carillion Construction Limited).

10. He explained that he was a senior solicitor employed by Carillion Construction, but says he was placed in Legal Group Services.

11. He says he never had access to the building division employee representatives and in any event, he says he was retained by the respondents beyond 5 February 2020. He therefore argues that he cannot therefore be placed in Exit Pathway 5 and the decision should not apply to him.

12. I noted that Mr Larkin was not clear in his application as to which pathway is appropriate as an alternative to Exit Pathway 5. However, he does not appear to have acknowledged in his application, that taking into the account the decision

regarding all of the pathways in the judgment sent to the parties on 26 September 2022, any adjustment to his pathway would not produce a meaningful outcome in terms of success in this claim.

## Respondents' reply

13. The respondent noted in its reply that there has already been considerable correspondence between the Tribunal and parties between October 2021 and January 2022 concerning the question of exit pathways and the allocation of individual claimants in relation to each pathway.

14. They refer to a letter dated 31 January 2022, where Mr Larkin accepted allocation to pathway 5.

15. They also reminded the Tribunal that any variation regarding allocated pathways would still result in his claim failing, given the findings made in the judgment sent on 26 September 2022 and referred to above.

## Decision and reasons

16. I agreed with the respondent's submission that Mr Larkin had previously confirmed in writing that he accepted his allocation to pathway 5 in his letter dated 31 January 2022. While he may have expressed his unhappiness with having to accept this as his proposed pathway, he nonetheless clearly accepted pathway 5 as being the correct allocated pathway for his case.

17. There had been considerable correspondence with the parties before this date regarding the allocation of pathways and Mr Larkin could have challenged his allocation and attended the final hearing to give evidence in support of this argument. Other parties did so, and reference is made to their arguments in the judgment. He is now seeking to revisit decisions made in a final hearing and his failure to attend the hearing is his responsibility.

18. It is not in the interests of justice to reopen this process as he had ample opportunity to raise these arguments before he sent his letter on 31 January 2022 accepting his allocation to pathway 5.

19. Mr Larkin has failed to identify which of the other exit pathways he should have been allocated to instead of pathway 5. However, even if he had been allocated to another pathway, the effect of such a decision would have made not material difference to the outcome of his claim in these proceedings given the decisions reached by the Tribunal in relation to all 5 pathways in this case.

20. For these reasons, Mr Larkin's application is refused. He remains allocated to Exit Pathway 5 (redundancy – no work available) and subject to the Tribunal's judgment.

## Conclusion

21. Having considered all the points made by this claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is refused.

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Employment Judge Johnson
DATE: 12 December 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
12 December 2022

FOR THE TRIBUNAL OFFICE