



EMPLOYMENT TRIBUNALS

Claimant: Mr C Sterling

Respondent: Leeds Teaching Hospitals NHS Trust

HELD at Sheffield (on the papers)

ON: 12 December 2022

BEFORE: Employment Judge Brain

JUDGMENT ON RECONSIDERATION

The judgment of the Employment Tribunal is that there is no reasonable prospect of the judgment promulgated on 9 September 2022 being varied or revoked. Accordingly, the claimant's application for reconsideration fails and stands dismissed.

REASONS

1. The Employment Tribunal promulgated a reserved judgment in this case on 31 January 2022. The claimant succeeded upon one complaint of harassment related to race. This was upon the issue referred to in paragraph 4 of the reserved judgment.
2. The remedy hearing took place on 7 September 2022. The Tribunal ordered the respondent to pay to the claimant the sum of £1000 by way of compensation for injury to feelings. The remedy judgment was promulgated on 9 September 2022. I shall now refer to this simply as "*the Judgment*".
3. On 20 September 2022, the claimant emailed the Tribunal. He said that "*after careful reconsideration regarding not initially pursuing interest to be added to the compensation awarded, I would now like the interest to be added where possible.*"
4. Rule 70 of Schedule 1 to the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* provides an Employment Tribunal with the general power to reconsider any judgment where it is necessary in the interests of justice to do so. The power can be exercised either of the Tribunal's own motion or on the application of a party. Rules 71 to 73 set out the procedure by which the power is to be exercised.

5. Rule 70 provides a single ground for reconsideration. That ground is where it is necessary to do so in the interests of justice.
6. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. The Tribunal should be guided by the common law principles of natural justice and fairness. Tribunals have a broad discretion but that must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and the public interest in the finality of litigation.
7. An application for reconsideration must be presented in writing and copied to all other parties within 14 days of the date upon which the written record of the decision which is the subject of the reconsideration application was sent to the parties. In this case, the Judgment was promulgated on 9 September 2022. The time limit for making the reconsideration application expired on 23 September 2022. (9 September 2022 does not count in the reckoning of the 14 days' time limit). The Tribunal received the claimant's application on 20 September 2022. The claimant therefore made the application to the Tribunal in time.
8. He did not copy the respondent into the reconsideration application. The Tribunal has a discretion to waive any irregularity arising from non-compliance with the rules pursuant to Rule 6. I am satisfied that there has been no prejudice to the respondent. They were copied into the application by the Tribunal in any case and further I am able to deal with the reconsideration application without any input from them.
9. Rule 72 sets out the procedure that an Employment Tribunal must follow upon receipt of an application for reconsideration. The procedure is that the application is put before the Employment Judge who chaired the panel hearing the case (where the hearing was before a full panel). The Employment Judge must then decide whether it can be said that there is no reasonable prospect of the judgment in question being varied or revoked. If the Employment Judge does so decide, then the application will be refused.
10. If the Employment Judge is not satisfied that it can be said that there is no reasonable prospect of the judgment being varied or revoked, then the procedure is for the Tribunal to send a notice to the parties setting a time limit for any response to the application by the other party and seeking the parties' views on whether the application can be determined without a hearing. The matter may then be decided on paper or proceed to a reconsideration hearing.
11. At the remedy hearing held on 7 September 2022, the claimant gave evidence. The Tribunal then received helpful submissions from each part after which the Tribunal adjourned to consider their ruling upon the claimant's claim for injury to feelings attributable to the successful complaints of harassment.
12. After the Tribunal had given their decision, the question of interest arose. Pursuant to the *Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996* where a Tribunal makes an award under the Equality Act 2010 it may include interest on the sums awarded and shall consider whether to do so without the need for any application by a party in the proceedings.

13. The Tribunal did consider whether to award interest. When the matter was broached, the claimant indicated that it did not wish to pursue it. Upon that basis, the Tribunal determined that it was not in the interest of justice to make an award of interest against the claimant's wishes.
14. The claimant has changed his mind. The question that arises therefore is whether it is in the interests of justice to permit him to change his mind.
15. The interests of justice as a ground for reconsideration relate to the interests of justice to both sides. In **Redding v EMI Leisure Limited** EAT 262/81 the claimant appealed against an Employment Tribunal's rejection of her application for a review (as reconsideration was then known) of the Tribunal's judgment. She argued that it was in the interests of justice to do so because she had not understood the case against her and had failed to do herself justice when presenting her claim. The Employment Appeal Tribunal observed that: *"When you boil down what is said on [the claimant's] behalf, it really comes down 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 sides. It is not said ... and cannot be said that any conduct of the case by the employer here caused [the claimant] not to do herself justice. It was, we are afraid, her own inexperience in the situation."* Accordingly, the claimant's appeal against the refusal of the reconsideration application failed.
16. The principles of natural justice must also be taken into account on a reconsideration application. Such includes the important principle of the public interest in finality of litigation as a matter of public policy. It would be unfortunate if an aggrieved party, having realised a tactical or other error, were able to re-open a case. Such would plainly be contrary to the public interest in the finality of litigation and the interests of justice when seen from the perspective of both sides.
17. In the circumstances, it is my judgment that the claimant's reconsideration can be said to have no reasonable prospect of success. The application therefore stands dismissed.

Employment Judge Brain

Date: 29 December 2022