



EMPLOYMENT TRIBUNALS

Claimant: Mr K Khan

Respondent: The Cabinet Office

JUDGMENT

The claimant's application dated 5 October 2022 for reconsideration of the judgment sent to the parties on 22 September 2022 is refused on the grounds that there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Before dealing with the substance of the reconsideration application, I briefly set out some relevant background information.
2. Although received by the tribunal on 5 October 2022, the Claimant's application for reconsideration of the reserved judgment was not referred to me until 14 December 2022. I received notice that the Claimant had appealed to the Employment Appeal Tribunal against my decision to strike out all his claims on 5 December 2022. I saw from that correspondence that the Claimant said he had made an application for reconsideration and I requested a search of the tribunal's email in-box, to which I do not have access, to be carried out to see if it could be located. I was informed that the reason it was not identified before was because it was submitted with an incorrect case number reference.
3. An earlier application dated 8 September 2022 was attached to the reconsideration application. That had also not been seen by me prior to 14 December 2022. That earlier application refers to an FOI request made by the Claimant on 2 June 2022. I have not seen that and would not expect to see that as FOI requests are dealt with by HMCTS and not by members of the judiciary.
4. The earlier application was that I recuse myself from the case. As stated above, I did not see the application and so did not consider recusing myself before finalising the reserved judgment. Had I seen the application, however, I would not have recused myself as I do not consider the application contains any valid grounds for me to do so.

5. I turn now to the substance of the five grounds contained in the application for reconsideration.
 6. The first ground is that the “ET misrepresented the Claimant's USB allegation”. In my judgment this ground has no reasonable prospects of success. Prior to hearing the respondent’s strike out application, I sought to understand the Claimant’s allegation in relation to the USB stick. It is found in the list of issues set out in the judgment at paragraph 7.6(g). The allegation in the list of issues is in accordance with the allegation as presented in the reconsideration application such that there was no misrepresentation.
 7. The second ground is that the ET “Misapplied the requirement for detriment for the USB allegation.” In my judgment this ground has no reasonable prospects of success. The decision to strike out the claim was made because I considered it to be covered by the *res judicata* principle. Although the Respondent argued that the claim should not be allowed to proceed because it lacked reasonable prospects of success because the claimant could not establish a detriment, I did not strike out the claim on this basis.
 8. In paragraph 83 I did say that had I not struck out the claim because of the *res judicata* principle, I would have made a deposit order as I considered it unlikely that the claimant would succeed in establishing a detriment. I doubted that he was being genuine about the particular USB stick having value, but did not reach a determination on the point. My decision does not demonstrate a misapplication of the requirement for a detriment.
 9. The third ground is that the “ET did not enquire why the USB claim was brought in May 2021 and not earlier.” In my judgment this ground has no reasonable prospects of success. I did not consider that the USB claim could not proceed because of any issue to do with the time it was presented and so it was not necessary to make this enquiry.
 10. The fourth ground is that the ET “Determined whether certain communication is privileged without notice.” In my judgment this ground has no reasonable prospects of success. This ground refers to the communications between Acas and the Claimant. I made no such finding or determination. I simply recorded that there was a dispute between the parties in relation to this in the list of issues where I said:

“His communications with ACAS dated 14 February 2020 and 24 April 2021 – not admitted, because they were said by the respondent to be without prejudice”
 11. The fifth ground is that “The ET did not follow the principle set out in *Anyanwu*.” In my judgment this ground has no reasonable prospects of success. I reiterate that the reason I struck the allegation relating to the USB stick out was because of the *res judicata* principle. The principle in the case of *Anyanwu v. South Bank Student Union* [2001] ICR 391 was not therefore applicable to that decision. It was applicable to my consideration of the Respondent’s argument in relation to the merits of the claim, however. I consider I correctly applied it, hence my alternative decision regarding a deposit order rather than a strike out.
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Case No: 2203466/2021

**Employment Judge E Burns
20 December 2022**

JUDGMENT SENT TO THE PARTIES ON

20/12/2022

FOR THE TRIBUNAL OFFICE