



EMPLOYMENT TRIBUNALS

Claimant: Mr R Wagener

Respondent: The Cabinet Office
(in substitution for The Right Honourable Michael Gove MP)

JUDGMENT

The claimant's application dated 25 November 2022 for reconsideration of the Tribunal's reserved judgment dated 17 November 2022 and sent to the parties on 21 November 2022 is refused.

REASONS

1. Following a preliminary hearing on 16 November 2022, the Tribunal promulgated a reserved judgment dated 17 November 2022 and sent to the parties on 21 November 2022.
2. The Tribunal determined that the original respondent, The Right Honourable Michael Gove MP, should be removed as a party to the claim, and that The Cabinet Office should be substituted as a party. The Tribunal also refused the respondent's application to strike out the claim.
3. In an application dated 25 November 2022, which was referred to the judge on 21 December 2022, the claimant applied for a reconsideration of the reserved judgment and its reasons.
4. A judgment may be reconsidered where it is in the interests of justice to do so. If the judgment is reconsidered, the original decision may be confirmed, varied, or revoked. However, if the judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused, and the parties shall be informed.
5. This is a consideration of the application under the first stage in rule 72(1).
6. The reconsideration process is apt where the Tribunal has made an obvious error that can be best remedied by varying or revoking the judgment upon review; or

where there is new evidence unavailable at the time of the hearing; or where there has been a procedural irregularity or an obvious injustice. The threshold is set by what is in the interests of justice.

7. However, there is nothing in the present application that suggests that that threshold has been reached. The application reveals that the claimant is unhappy with the Tribunal's decision or its reasoning, and that he disagrees with it. That is not enough for the purposes of rules 70-73. The application is therefore refused at the first stage under rule 72(1) for the following reasons.
8. First, the reconsideration process is not appropriate where a party seeks clarification of the written reasons for the judgment by asking for the provision of further information, whether the purpose of that request is so that the party can have a clear understanding of the Tribunal's reasoning. If the Tribunal's reasons are in some way inadequate or incomplete, then the proper course is to challenge the decision on appeal. The reconsideration process is not generally designed for the Tribunal to perfect its reasons or to explain them.
9. Second, it is not the function of reconsideration to rectify alleged inaccuracies in the judgment, whether they relate to a party or not. Court and tribunal judgments are not subject to data protection principles. In any event, a certificate of correction (as opposed to a reconsideration) should only be used to correct obvious errors of substance or consequence. To do otherwise is to misuse judicial resources.
10. Third, the Tribunal's reasons record the essence of the parties' written submissions. In addition, those written submissions were spoken to by the claimant and by the respondent's counsel. The Tribunal did not have the claimant's or the respondent's speaking notes before it as part of these materials, but those oral submissions were noted by and accounted for by the Tribunal in reaching its decision. It was not necessary to set out the submissions in verbatim detail or to address in the written reasons every argument that was put to the Tribunal.
11. Fourth, the alleged errors or omissions are not substantial or of consequence. The Tribunal and the parties appreciated fully that the claimant's employment since 1983 encompasses HMRC and its predecessors in title. Also, whether the claimant has been wholly unemployed since retirement or has had other sources of income is not at present an issue that will fall to be determined in due course. Moreover, the Tribunal understood that the claimant modified his argument as to section 112 of the Equality Act 2010 in his oral submissions.
12. Fifth, as to the specific issues that the claimant raises in paragraphs 9-16 of his application, the reconsideration process is not an occasion for a party to re-argue or to re-emphasise his case. The Tribunal was concerned to decide the preliminary questions of: (1) whether Mr Gove was properly a respondent to the claim; (2) if he was not, whether he should be removed from the proceedings and/or whether the claim should be dismissed; (3) if Mr Gove should be removed from the proceedings, which governmental legal entity should be substituted for him, if at all; and (4) whether the claim should otherwise be struck out under rule 34 or rule 37. It has determined those issues and it has provided its reasons for its

determination. That decision is challengeable on appeal, on a point of law, if the claimant is so minded or advised.

13. Finally, paragraph 113 of the written reasons contains the Tribunal's essential analysis of whether the claim could be said to have little or no reasonable prospect of success. That required the Tribunal to assess the relative merits of the claim as it appeared to it at the time of the preliminary hearing. It does so solely based on the pleadings taken at their highest at that point. It does not conduct a mini-trial or make findings of fact. It recognised that the pleading stage had not yet been concluded. The paragraph speaks for itself.
14. In all these circumstances, it is not in the interests of justice to permit the application to proceed to the second stage of reconsideration. The interests of justice do not require the judgment to be reconsidered. There is no reasonable prospect of the original decision being varied or revoked. The application is refused accordingly, and the parties are hereby informed of that decision.

Judge Brian Doyle
DATE: 22 December 2022

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON
6 January 2023

FOR THE TRIBUNAL OFFICE

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