



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr. W Abbas

AND

Slough Borough Council

JUDGMENT

The Claimant's application dated 16 September 2022, for reconsideration of the judgment sent to the parties on 2 September 2022, is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

Introduction

1. The Claimant presented claims for: Unfair dismissal; Race discrimination; Religious belief discrimination; Disability discrimination.
2. Default judgment was entered on 16 June 2021, and the case was listed for a remedy hearing. Following various communications between parties and the Tribunal, Respondent applications to set aside the default judgment and extend the time to present a response were added to that hearing.
3. I heard the case by CVP on 30 May 2022, at which hearing the Claimant represented himself and the Respondent was represented by Counsel.
4. The reserved judgment and reasons was sent to the parties on 2 September 2022 (references to that judgment within this judgment will appear in [] with the prefix RJ). The Claimant applied for reconsideration of that decision on 16 September 2022.

The applicable legal principles

5. The Tribunal's powers concerning reconsideration of judgments are contained in rules 70 to 73 of the Employment Tribunals Rules of Procedure 2013. A judgment may be reconsidered where “*it is necessary in the interests of justice to do so.*”
6. Applications are subject to a preliminary consideration. They are to be refused if the judge considers there is no reasonable prospect of the decision being varied or revoked. If not refused, the application may be considered at a hearing or, if the judge considers it in the interests of justice, without a hearing. In that event the parties must have a reasonable opportunity to make further representations. Upon reconsideration the decision may be confirmed, varied or revoked and, if revoked, may be taken again.
7. Under rule 71 an application for reconsideration must be made within 14 days of the date on which the judgment (or written reasons, if later) was sent to the parties. I accept that this application was made in time.
8. The approach to be taken to applications for reconsideration was considered in the case of ***Liddington v 2Gether NHS Foundation Trust*** UKEAT/0002/16/DA in the judgment of Simler P. The tribunal should:
 - a. identify the Rules relating to reconsideration particularly the provision enabling a Judge, who considers that there is no reasonable prospect of the original decision being varied or revoked, to refuse an application without a hearing at a preliminary stage;
 - b. address each ground in turn and consider whether there is anything in each of the particular grounds relied on that might lead a tribunal to vary or revoke the decision; and
 - c. if this leads to the conclusion that there is nothing in the grounds advanced by that could lead to the decision being varied or revoked, give reasons for that conclusion.
9. In paragraphs 34 and 35 of the judgment Simler P gave the following guidance:

“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 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. Tribunals have a wide discretion whether or not to order reconsideration.

Where ... a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted

error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

The Claimant’s ground(s) for reconsideration

10. I have carefully considered the Claimant’s request sent by email on 16 September 2022 attaching a 57-paragraph statement (references to the statement within this judgment will be to paragraph numbers and contained within []) and an appendix of documents (references to the appendix within this judgment are within [] with the prefix App), to determine what grounds he relies on for reconsideration. Where relevant documents do not appear in the Appendix, reference will be made to the original hearing bundle within [] with the prefix OB.
11. The Claimant’s primary ground for reconsideration is that he was only attending the hearing on 30 May 2022 for the purposes of a remedy hearing, so the hearing was conducted in contravention of the Tribunal Rules, and any and all questions directed to him were inappropriate. In support of this, the Claimant refers to, and relies, on correspondence from EJ Gumbiti-Zimuto on 10 and 19 May 2022 ahead of the hearing on 30 May 2022. This correspondence was seemingly in reply to the Respondent’s requests for reconsideration of the default judgment of 16 June 2021.
12. On 10 May 2022 [App 2], EJ Gumbiti-Zimuto wrote that the hearing on 30 May 2022 would remain as listed, and that:

“Directions have been given to allow parties to prepare for a hearing to deal with the Respondent’s application to set aside the Rule 21 judgment.”
13. On 19 May 2022 [App1], EJ Gumbiti-Zimuto repeated the position set out on 10 May 2022.
14. The listing referred to on 10 and 19 May 2022 was originally made on 6 March 2022 [OB A:116]. Following further correspondence from the Respondent’s representatives to the Tribunal, on 24 March 2022 EJ G replied:

“The Respondent’s application to present a response out of time will be considered on the 30th May 2022 before the Remedy Hearing.”
15. The 24 March 2022 correspondence is not referred to by the Claimant in his reconsideration request, but is included within his Appendix [App 7].
16. In relation to the conduct of the hearing on 30 May 2022, the Claimant cites Rule 19(3) as being the applicable provision, because the Respondent’s application *“was essentially an “appeal” by the Respondent and the Claimant was not required to attend”* [9].

17. The remainder of the application is premised on the Claimant's disagreement with the tribunal's findings, and subsequent conclusions. I do not propose to list each of those separately, but note some specific issues that the Claimant raises:

17.1 The record [RJ 14] "...that "Ms Nagra did not attend to give oral evidence as she was on a pre-booked trip to the Seychelles." This is not what was said by Mr Harding at all at the Hearing when the question of why Ms Nagra was not present was asked by the judge. Consequently, the Seychelles are NOT in Europe but Africa" [18].

17.2 Various objections to records of breaks taken, provision of documents by parties, and delays in the hearing [48; 49]

Conclusions

18. It is clear from reading the Tribunal correspondence referred to above – in March and May 2022 - that the purpose of the hearing on 30 May 2022 would be to deal with the Respondent's application to set aside the Rule 21 judgment, and associated application to extend time to provide a response, before any remedy hearing could take place.
19. None of the correspondence refers to the hearing being for the purpose of dealing with a reconsideration of a decision to reject a response. As such, Rule 19(3) was not applicable.
20. Although it was not explicitly stated within the correspondence in March and May 2022, it is also clear that if the Respondent's application for set aside was allowed then there would be no remedy hearing. It was not the case that the remedy hearing would go ahead regardless of the outcome of the Respondent's applications. For the purposes of case progression, the judgment would be treated as no longer existing.
21. The Tribunal also confirmed with the Claimant at the start of the hearing that he understood what was going to happen [RJ 12].
22. Given the purpose of the hearing, the Tribunal was entitled to ask questions of the Claimant. This was done primarily to ascertain his position on submissions being made by Respondent Counsel. However, as he was a litigant in person (assisted only partially by a lay representative) inevitably some of his responses may have strayed into giving evidence rather than submissions. To avoid any issues with the distinction between these forms of addressing the Tribunal, the Claimant was sworn in.
23. In relation to the specific points raised by the Claimant, detailed at 17.1 and 17.2 above:
- 23.1 The Tribunal's recollection is that Seychelles was the destination referred to. Even if that is incorrect, the location is immaterial to determining the issues in the case.

23.2 Whilst the Claimant's recollection of breaks may differ from the Tribunal's, this is not relevant to the issues in the case. The Tribunal's record of the provision of documents, and any delays, was not intended to be critical of any party and in any event did not affect the decision-making process.

24. The findings of the Tribunal were found on a consideration of the respective cases put forward by the claimant and respondent; due consideration being given to these, and upon which the Tribunal made its conclusions.
25. These points raised by the Claimant now, were already argued before at the hearing on 30 May 2022. The Tribunal fully considered the evidence presented to it, reaching its decision on this. Nothing within the submissions being made in the application for reconsideration affect the judgment reached by the Tribunal.
26. I do not consider there is a reasonable prospect of the original decision being varied or revoked on the basis of the circumstances as set out by the Claimant, nor would it be in the interests of justice to reconsider the decision.

Employment Judge K Douse

Dated: 10 January 2023

Sent to the parties on:

24 January 2023

FOR THE TRIBUNAL OFFICE

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