



EMPLOYMENT TRIBUNALS

Claimant

Mr Kieron Dominic Scully

v

Respondent

Northamptonshire County Council

UPON THE CLAIMANT'S APPLICATION dated 23 November 2022, amended and re-submitted on 5 December 2022 and further supplemented on 25 January 2023, for reconsideration of the Judgment dated 28 February 2022 (sent to the parties on 13 March 2022) under rule 71 of the Employment Tribunals Rules of Procedure 2013.

JUDGMENT on RECONSIDERATION APPLICATION

1. The Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked.
2. The Claimant's reconsideration application is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons:

1. The Tribunal gave a Judgment on 28 February 2022 striking out the Claimant's complaints against the Respondent on the grounds that they had no reasonable prospects of success. Written reasons for that Judgment were provided to the parties on 19 May 2022 in response to a request being made by the Claimant.
2. Rule 70 of the Employment Tribunal Rules of Procedure 2013 empowers the Tribunal, either on its own initiative or on the application of a party, to reconsider any Judgment where it is necessary in the interests of justice to do so. Rule 71 requires that any application for reconsideration must be presented in writing within 14 days of the date on which the written record, or other written communication, of the original decision is sent to the parties, or within 14 days of the date that the written reasons are sent (if later). The Claimant's application was first submitted more than five months out of time. Most recently he has sought to supplement his already amended application with a further eleven page written submission.

3. The starting point clearly has to be the decision I reached at the hearing on 28 February 2022. I have re-read the Judgment and written reasons. I consider that I set out my findings and conclusions in detail. Should these matters be examined on appeal, it will be for the Employment Appeal Tribunal to say whether those reasons and my decision can stand.

Reconsideration

4. In Outasight VB Ltd. v Brown UK EAT/0253/14, the Employment Appeal Tribunal considered the Tribunals' powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013. At paragraphs 27 – 38 of her Judgment, Her Honour Judge Eady QC, as she then was, set out the legal principles which govern reconsideration applications, and observed,

“The interests of justice have thus long allowed for broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.”

5. In Outasight, the Employment Appeal Tribunal was referred to the EAT's Judgment in Redding v EMI Leisure Ltd. EAT/262/81 in which the EAT had observed:

“...When you boil down what is said on [the Claimant's] behalf, it really comes 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 parties. It is not said, and, as we see, cannot be said that any conduct of the case by the employers here caused [the Claimant] not to do herself justice. It was, we are afraid, her own experience in the situation...”

6. If the Claimant feels that he did not do himself justice in the matter on 28 February 2022, in my judgment there is no reasonable prospect of him establishing any conduct on the part of the Respondent that may have caused or materially contributed to that. He asserts that the Respondent knowingly failed to provide a truthful account regarding their knowledge of S's capacity and that Mr Hodgson lied to the Tribunal in that matter (the Claimant says he “knowingly gave false evidence”). Paragraph 5 of my written reasons confirms that I found Mr Hodgson to be an articulate and credible witness and, further, that the Claimant did not challenge his evidence in any material respects. In the course of his oral evidence, Mr Hodgson referred the Tribunal to the provisions of sections 31 and 32 of the Care Act 2014 which respectively deal with direct payment arrangements for adults with capacity and those who lack capacity. The fact that an adult lacks capacity does not preclude a direct payment arrangement. Mr Hodgson did not state or infer in his evidence to the Tribunal that S had capacity. His unchallenged evidence was that any decision regarding S's

capacity had been taken by the Council's adult social care team and that this was not a matter for CIL or PSBB.

7. It is clear from paragraph 19 of Mr Hodgson's witness statement that following such an assessment of S's capacity it was identified that direct payments were appropriate, provided S was supported by his mother and she operated as his representative. This is also confirmed in the third and fourth pages of the letter from West Northamptonshire Council dated 1 August 2022 that the Claimant seeks to rely upon in his application for reconsideration. It is relevant in this regard that at paragraph 25 of his witness statement, Mr Hodgson referred to S's mother as his "authorised person", this being a defined term in section 32 of the Care Act 2014 which deals with direct payment arrangements in relation to those who lack capacity. Whilst Mr Hodgson was not responsible for assessing capacity, the whole tenor of his evidence was that he understood S to lack capacity.
8. In my judgement, not only is there no reasonable prospect of the Claimant establishing dishonesty, fraud or concealment, as he variously asserts, but there is also no reasonable prospect of him establishing that the Tribunal was misled by Mr Hodgson. At paragraph 7 of my written reasons I specifically refer to S's complex needs and to significant doubts regarding his capacity. I should add that it was not necessary for me to determine whether the Claimant was employed by his mother, Vera Scully, either in her personal capacity or as S's representative or authorised person, since the Claimant was clear that he did not wish to amend his Claim to join any other party as a Respondent.
9. Justice has to be done to both parties. Litigation has to be kept within sensible bounds. It is not necessary in the interests of justice that the Claimant should have a 'second bite at the cherry'. In any event, neither the correspondence relied upon by the Claimant nor his detailed written submissions provide arguable grounds for revoking the decision to strike out his complaints against the Respondent following my findings that he was not employed by it. Ultimately, S's capacity or lack of capacity did not alter that conclusion.
10. In all the circumstances the application for reconsideration is refused.

Employment Judge Tynan

Date: 1/2/2023

Sent to the parties on: 9 February 2023

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For the Tribunal Office