



EMPLOYMENT TRIBUNALS

Claimant: Mr R Downing

Respondent: Lancashire County Council

JUDGMENT- RECONSIDERATION

The claimant's application dated 17 January 2023 for reconsideration of the judgment sent to the parties on 3 January 2023 is refused.

REASONS

1. I have undertaken preliminary consideration of the claimant's application for reconsideration of the judgment in favour of the respondent. The grounds for the application are in an attachment to an email from the claimant to the Tribunal dated 17 January 2023.

The Law

2. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

3. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

4. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

“the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review.”

5. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

“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 by 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.”

6. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely, to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Application

7. The claimant's application is for a “second bite at the cherry” which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. A Tribunal will not reconsider a finding of fact just because the claimant wishes it had gone in his favour.

8. Almost all of the reconsideration application can broadly be divided in to 2 parts:-

- a. Points raised about the contractual terms under which the claimant was employed.
- b. Points raised about the circumstances in which Mr Clare was engaged from Easter onwards.

Type of contract.

9. The claimant repeats points that were made by him at the final hearing and considered by the Tribunal. He is referred to paragraphs 72,73 and 133 of the judgment.

Engagement of Mr Clare.

10. In his reconsideration application the claimant criticises the decision of the second respondent to enter in to the contractual arrangement that it did with Mr Clare following his retirement at the end of the second term (start of the Easter holidays). He criticises the Tribunal for accepting that the respondent continued with what he described (at paragraph 2 of his application) as a “*questionable or illicit plan to circumvent the pension rules.*” This criticism is repeated elsewhere in the reconsideration application.

11. The Tribunal made findings of fact based on the evidence provided by the parties. Those findings did not include findings about whether the arrangements with Mr Clare were (or were not) “questionable or illicit.” The tribunal was not for example required to determine whether there had been compliance with relevant pension rules. The judgment records the facts as we found them. We applied those findings when considering the complaints made that the respondents had acted in contravention of the Equality Act 2010. We concluded that they had not.

Other issues raised

12. At paragraphs 15 and 22 of his application, the claimant raises points about him being required to attend school for one day during the lockdown period. Our relevant findings of fact are clearly set out at paragraphs 42 to 47 and our decision on the relevant complaint of direct discrimination (prioritising the claimant to attend school) is clearly set out and explained at paragraphs 116 to 122. Paragraph 15 appears to be an attempt to raise a new allegation of indirect discrimination; paragraph 22 a new complaint that health and safety obligations were breached. Neither was raised previously and it is not in the interests of justice to attempt to consider these now.

13. At paragraph 27, the claimant disagrees with our finding at paragraph 129 of the judgment – that the School did not consider the claimant for the role carried out by Mr Clare. The claimant alleges bias (presumably by the Tribunal, whose decision was unanimous). He supports this allegation by noting that the claimant had raised in a complaint that the position occupied by Mr Clare might be available to him. The claimant does not say what complaint he refers to. The only complaints that the Tribunal were referred to were made well after the Schools decision to engage Mr Clare during the 2020 summer term. (see paragraph 78 – reference to complaint of 15 June 2020).

Conclusion

Having considered the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

Employment Judge Leach
DATE: 3 March 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
7 March 2023

FOR THE TRIBUNAL OFFICE