



EMPLOYMENT TRIBUNALS

Claimant: Mr T Lennon

Respondent: Linde Material Handling (UK) Ltd

Heard at: Remotely by Video Hearing System (VHS)

On: 18th January 2023

Before: Employment Judge Lambert

Representation:

Claimant: Mr Lennon

Respondent: Ms Faiz, solicitor

JUDGMENT ON APPLICATION FOR RECONSIDERATION

The judgment of the Tribunal is that the Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. The Claimant has applied for a reconsideration of a judgment dated 18th January 2023 which was sent to the parties on 30th January 2023 (*"the Judgment"*). The grounds for the reconsideration are set out in his email dated 31st January 2023 (*"the Grounds"*)
2. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 (*"the Rules"*). Under Rule 71 an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) were sent to the parties. The application was therefore received within the relevant time limit.
3. The grounds for reconsideration are only those set out in Rule 70, namely that it is necessary in the interests of justice to do so.

4. The Grounds do not expressly refer to “the interests of justice” but as that is the only ground upon which an application for reconsideration can be made, they have been reviewing against that requirement.
5. The Claimant states within the Grounds that:-
 - a. he wanted to bring several issues to the attention of the Tribunal, including matters relating to the Respondent’s policies but was not able to;
 - b. that evidence around duress and/or mental health should be reconsidered; and
 - c. he was not able to cross examine a Mr Wateridge at the hearing.
6. The purpose of the hearing was to determine whether the complaints he wished to pursue in the Tribunal had already been settled by way of the execution of a COT3 agreement, with the involvement of ACAS.
7. The Claimant had already attended a Preliminary Hearing where this matter was listed and one of the Orders required the Claimant to confirm whether he wished to continue with his claim. It also listed as a matter to be decided a cost application. Further, EJ Goraj urged the Claimant to take legal advice.
8. The Claimant confirmed that he had taken legal advice and confirmed via email that he wished to proceed with the hearing on 18th January 2023.
9. During the hearing, the Claimant contended that he did not have mental capacity at the material time to enter into the agreement although the medical evidence he adduced did not support his assertion. It related to issues several months after the execution of the COT3. The Claimant also accepted that he was not placed under any pressure by the Respondent to enter into the COT3.
10. I determined that the COT3 was legally binding and settled all of the Claimant’s claims. He did raise an allegation that employees of the Respondent had allegedly broken the confidentiality terms of the COT3 but, as was pointed out to the Claimant by EJ Goraj, this was not a claim he could pursue before the Tribunal.
11. I have kept in mind the decision in *Outsight v VB Brown* 2015 ICR D 11. In this case it was confirmed that Employment Tribunals have, under Rule 70, a broad discretion in determination of reconsideration applications. It was stated that discretion 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”.

12. An application for reconsideration is not therefore an opportunity for the party seeking it to have what might be regarded as being “*a second bite at the cherry*”.
13. The case of Fforde v Black UKEAT/68/80 contained the following comment from Lord McDonald:-

“Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case, where something has gone radically wrong with the procedure involving a denial of natural justice or suchlike.”
14. Having reminded myself of the relevant principles applicable and reading carefully the Claimant’s submissions I I refuse the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Lambert

Date: 22nd February 2023

Judgment sent to the Parties on 08 March 2023

For the Tribunal Office