



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case Number: 4110531/2021**

**Held in Glasgow on 1 March 2023**

**Employment Judge D Hoey**

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**Mr L Ramos**

**Claimant**

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**Lady Coco Ltd t/a  
Shamela's Fresh Hot and Cold Food**

**Respondent**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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**The claimant's second application for reconsideration of the judgment rejecting his claim on 14 September 2022 contained in his communication of 9 December 2022 seeking reconsideration of the reconsideration judgment of 10 November 2022 is refused, there being no reasonable prospects of the judgment being revoked.**

### **REASONS**

#### **Background**

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1. This case has a long procedural history, having been raised in 28 July 2021. A hearing took place on 14 and 15 September 2022, with the claim being dismissed. An oral judgment was issued with written reasons being provided upon request.
2. The claimant sought reconsideration of the judgment which application was

considered in detail and refused on 10 November 2022. The Tribunal carefully considered all the evidence presented by the claimant and reached a decision, unanimously, based upon the full evidence, both oral and written.

3. On 9 December 2022 the claimant sought reconsideration of the decision not to reconsider the judgment.

4. I have undertaken a preliminary consideration of the claimant's application for reconsideration of the judgment dismissing his claim.

### **The decision**

5. At the final hearing in this case having heard parties' evidence and submissions the Employment Tribunal issued an oral judgment dismissing the claim. The Tribunal had found as a fact that the claimant had no genuine intention of applying for the role in question. The Tribunal concluded that the claimant did not wish to move to Scotland and had made no effort to consider such a move. He had seen the advert (the terms of which were agreed), which was discriminatory, and knowing the law, sought to secure money from the respondent via the Tribunal process.

6. The claimant is an articulate, intelligent and capable individual. He has a masters degree (and certificate in accountancy) and works as a self employed interpreter and has worked in market research. He last worked in hospitality in 1990. He stays in Hounslow. He applied for no other jobs in Scotland (before or after the advert in question). He said he wished to move due to the cost of living being better in Scotland and the advert having referred to there being a beautiful park in Ruchill, and that it was a beautiful place.

7. The claimant did not in fact apply for the role. He saw the advert and raised a claim for unlawful discrimination given its reference to "female takeaway staff needed" (albeit the advert later refers to "he/she"). The claimant did not contact the respondent prior to raising proceedings. He argued he was deterred from doing so because of the advert said "female takeaway staff needed" and he was male. He said he believed the advert was fake in any event. He said he did not want to enter into an argument with the respondent

and so did not apply. He had presented research which he said evidenced these issues.

8. The Tribunal found that the claimant had no intention of applying for the role. He had not worked in hospitality for many years. He had not applied for any other roles in Scotland. He was clearly capable of presenting his position and advancing his rights. His approach in setting out his claim in writing and orally demonstrated that. The Tribunal concluded that the claimant was in no way deterred from applying for the role whatsoever. The claimant chose not to apply as he did not wish to apply. His sole purpose in raising the claim was because he wished to secure money from the respondent having seen that the advert was unlawful.
9. The Tribunal found that the claimant had carried out the research and reached a view in relation to the explanation for not applying following his decision not to apply for the role. The Tribunal did not accept that the fact the claimant believed the advert to be fake or the fact it had said “female takeaway staff” were to any extent a reason for his decision not to apply. The Tribunal did not accept a reason for his decision not to apply was the fact he did not wish to enter into an argument or discussion. The Tribunal found as a fact from the evidence presented that the claimant made a choice not to apply for the role, having been capable of doing so, if he wished to apply for it.
10. The Tribunal took into account the full terms of the advert. The advert stated that the location was “near the beautiful area of Ruchill park”. In reaching its decision that the claimant had no genuine desire to move to Scotland the Tribunal took account of the fact that the claimant had made no effort to undertake any research as to the area whatsoever. He stayed in London and had made no effort to look for work in Scotland before or after. He had no connection with Scotland and little funds to allow him to move his life to Scotland. The Tribunal did take into account the difference in cost of living (which was better in Scotland) but found the claimant to be evasive and lacking in candour. The better cost of living was not a reason as a fact in this case for the claimant wishing to move to Scotland. He did not wish to do so.

11. Had the claimant wished to apply for the role he was clearly capable of doing so and clearly capable of setting his position out. He did not do so because he had no intention of applying for the role.
12. The Tribunal considered all the documents submitted by the claimant, including his witness statement, background material and submissions, in addition to his oral evidence. The information provided by the claimant in this second reconsideration application does not in any way change or influence the decision that was reached. The Tribunal did not find the claimant to be credible or reliable.
13. The Tribunal unanimously found that the only purpose of the claimant raising the claims was to seek money from the respondent, him having no genuine desire whatsoever to apply for the role. On that basis the claim was dismissed. The oral judgment that was issued made the Tribunal's findings and reasons clear, including that it had expressly considered each of the claimant's reasons and all his material.

**The specific grounds considered**

14. In his application the claimant provides 3 grounds in support of his application which are considered in turn.

**First ground**

15. In his application the claimant argues that he was unable to contact the respondent because he did not have the correct details of the respondent, either via the advert or via companies house as he argued the correct company details had not been set out.
16. The claimant, however, presented no evidence of any attempt to contact the respondent. In any event the Tribunal was not satisfied from the evidence it heard that the claimant genuinely wished to apply for the role. He presented no evidence to show that he was interested in doing the job which was advertised or that he made any effort to contact the respondent to undertake the role. His sole focus was in relation to the discriminatory terms of the advert but was not in respect of a position in which the claimant had any genuine

interest. That was the Tribunal's decision on the facts that the claimant presented to the Tribunal.

17. There is no basis to reconsider that decision from the information the claimant presented in his reconsideration application.

5 **Second ground**

18. The claimant argues that the advert "could have been fake". The claimant provides information that suggests a rise in fake adverts and that he was therefore right to be suspicious of the respondent and its advert. The Tribunal took account of this but did not consider it material or relevant. From the  
10 evidence presented the claimant had no genuine desire to apply for the role. The fact the advert may have been believed by the claimant to have been fake did not alter the position.

**Third ground**

19. The claimant finally argues that it was wrong to proceed with the hearing  
15 without requiring evidence of the actual advert. The claimant argues that the respondent ought to have been able to provide a copy of the advert. At the case management preliminary hearing the respondent conceded that the terms of the advert relied upon by the claimant were correct. In other words the respondent accepted the terms of the advert as set out by the claimant  
20 were accurate (and that the terms were discriminatory). The only issue was therefore whether or not the claimant had a genuine desire to apply for the role. The background to the advert or the respondent's position in relation to the advert was not relevant given the parties had agreed what the advert said, which was the advert to which the claimant replied.

25 **No reasonable prospects**

20. In terms of rule 72(1) an Employment Judge shall consider the reconsideration application and if it is decided that there are no reasonable prospects of the original decision being varied or revoked, the application shall be refused.

21. The Tribunal took full account of the material provided by the claimant, including the issues he argues were overlooked. The Tribunal was unanimous in the view that the claimant had no genuine desire to apply for the role. He saw the unlawful advertisement and sought to use that as a way to seek money from the respondent. The Tribunal reached its unanimous decision from the evidence before it. None of the factors relied upon by the claimant in this second reconsideration application alters the position which was arrived at following the Tribunal's full and fair consideration of the claimant and the evidence presented at the hearing.

10 **The law**

22. 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).

15 23. 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.

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

25 **“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.”**

25. Similarly, in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the Employment Appeal Tribunal 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.”

26. 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. It is also important to recognise that fairness and justice applies to both parties – the claimant and the respondent.

## 20 **Conclusion**

27. I considered the overriding objecting in reaching my decision to ensure the decision taken was fair and just. That applies to both the claimant and the respondent since justice requires to be achieved for both parties. I have done so carefully.

28. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked nor of the original refusal to reconsider the decision being varied or revoked. The points raised were fully considered and addressed in reaching its unanimous decision. It is not in the interests of justice to reconsider the decision the Tribunal reached.

29. The application for reconsideration is therefore refused under rule 72(1) of

Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

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**Employment Judge: D Hoey**  
**Date of Judgment: 01 March 2023**  
**Entered in register: 03 March 2023**  
**and copied to parties**

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