



## 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

The claimant's second application for reconsideration of the judgment issuing a preparation time order against the claimant dated 15 September 2022 contained in his communication of 9 December 2022 seeking reconsideration of the reconsideration judgment of 24 November 2022 is refused, there being no reasonable prospects of the judgment being revoked.

### REASONS

#### Background

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. A preparation time order was issued against the claimant, his conduct during the claim found to have been vexatious and unreasonable and there being no reasonable prospects of success.

2. The claimant sought reconsideration of the judgment issuing a preparation time order against the claimant. That was refused, there being no reasonable prospects of success. The claimant has sought reconsideration of that refusal to reconsider the judgment under cover of his email of 9 December 2022.

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

**The decision**

4. 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.

5. 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.

6. The Tribunal took account of the actions of the claimant and concluded that he had acted vexatiously and unreasonably. He had used the Tribunal process to seek money from the respondent, having no genuine desire to apply for the role. The claimant's claim had no reasonable prospects of success and he ought to have known that at the time he raised his claim, there being no basis for his claim.

7. The Tribunal carefully took into account what had happened during the course of the hearing and did not award the respondent the full sum sought but

instead issued an order in respect of a sum considered consistent with the authorities in light of the facts of the case.

**The specific grounds considered**

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

**First ground**

9. 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  
10 company details had not been set out.

10. 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  
15 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.

- 20 11. There is no basis to reconsider that decision from the information the claimant presented in his reconsideration application. That information had no bearing on the claimant's conduct of this case. The Tribunal was satisfied the claimant had no genuine desire to apply for the role and sought only money from the respondent (using the Tribunal process as a vehicle to do so). The grounds  
25 for issuing the order had been clearly established.

**Second ground**

12. 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 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. The nature of the advert did not alter the claimant's desire which was to seek money from the respondent. There is no reason why the decision to issue the order against the claimant should be reconsidered.

**Third ground**

13. The claimant finally argues that it was wrong to proceed with the hearing 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 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.

14. The Tribunal took a step back in assessing all the evidence in this case. The Tribunal was satisfied from the oral and written evidence the claimant presented that he had no genuine desire to apply for the role or carry it out. The Tribunal was satisfied his sole aim was to seek funds from the respondent, having discovered a discriminatory advert. On that basis the information presented by the claimant in his reconsideration application does not alter the reasoning why the original order was issued. The claimant acted vexatiously and unreasonably and his claims had no reasonable prospects of success, a fact about which he ought reasonably to have been aware.

**No reasonable prospects**

15. 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.

16. 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 unanimously concluded from all the evidence before it that the grounds set out in rule 76 were engaged and that it was reasonable just and proportionate to issue the order it did having taken account of all the evidence in this case. 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.

#### The law

17. 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).
18. 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.
19. 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:
- “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.”**

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

5           **“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**  
10           **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**  
15           **tendered.”**

21. 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  
20           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.

### **Conclusion**

25   22. I considered the overriding objective 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.

23. Having considered all the points made by the claimant I am satisfied that there  
30           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. The decision to make the order was consistent with the evidence and authorities and was just.

24. 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.

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