



EMPLOYMENT TRIBUNALS

Claimant: Mr K Hebditch

Respondent: Weston Super Mare Town Council

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 was dismissed by the Respondent. On 8 August 2021, the Claimant issued a claim of automatically unfair dismissal, ordinary unfair dismissal and breach of contract against the Respondent arising from that dismissal. The claim was listed for final hearing on 23, 24 and 25 November 2022.
2. For the reasons which I gave orally at the conclusion of that hearing, I dismissed that claim. My judgment was dated 25 November 2022, and was sent to the parties on 20 December 2022. The Claimant requested written reasons, and these were sent to the parties on 11 January 2023.
3. The Claimant now applies for a reconsideration of that judgment. The grounds are set out in the Claimant's emailed letter of 25 January 2023. In summary, the Claimant says that:
 - a. One of the respondent's witnesses Sarah Pearse, lied during cross-examination, in respect of:
 - i. A Powerpoint presentation said to have presented to the Respondent's Policy and Finance Committee on 14 December 2020; and

- ii. The reviews of the Blakehay Theatre in 2016 and 2019, which she described in her evidence as “touch” or “light-touch” reviews rather than full reviews.
 - b. The Tribunal did not take into account that the Claimant’s case was that his dismissal was orchestrated by Sarah Pearse and Sally Heath, and therefore took into account factors that were irrelevant in determining that the real reason for his dismissal was not the fact that he had made a protected disclosure.
 - c. The Tribunal did not adequately take into account the duplication between the witness statements of Mrs Powell and Mr Nicholson regarding the question of whether the Claimant had been offered training in marketing.
4. 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 70 of the Rules, the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a decision where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked.
5. Rule 71 provides that 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.
6. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out a time limit for any response to the application by the other parties, and seeking the views of the parties on whether the application can be determined without a hearing.
7. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

“34. [...] 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 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. Tribunals have a wide discretion whether or not to order reconsideration.

35. Where [...] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application.”

8. The Claimant’s application was received within the relevant time limit. I therefore consider it under Rule 72.
9. The Claimant sent a number of additional documents along with his application. No explanation was given regarding why those documents were not put before the Tribunal at the previous hearing. In particular, it was not suggested that they were documents which were not previously available. They appear to be publicly available documents, and in his application for reconsideration the Claimant indicated that he could locate further documents if required. I do bear in mind of course that there was a page limit on the bundle for the final hearing. But at the start of the hearing on 23 November 2022, the Claimant sought permission to rely on a further five documents which were not in the trial bundle. Permission was given in respect of three (and the remaining two were withdrawn by the Claimant). So it could not be said that the bundle page limit acted as a barrier to the Claimant in adducing evidence he sought to rely on.
10. The Claimant’s first point related to the evidence of Mrs Pearse regarding the Policy & Finance Committee meeting on 14 December 2020. The Claimant says in his application that Mrs Pearse’s evidence was that she took a Powerpoint presentation to the committee which was not captured in the minutes. He then categorises Mrs Pearse’s evidence as being that the minutes would not include any record of a presentation being given. The Claimant says that this must be untrue, based on his scrutiny of a number of other sets of minutes, because:
 - a. Firstly, giving a presentation in a Policy and Finance committee meeting would be “highly irregular”, as minutes of the Policy and Finance Committee show reports being circulated in advance of the meeting.

- b. Secondly, he has found reference in two sets of minutes of the Tourism and Leisure Committee which do record a Powerpoint presentation being given, so it cannot be the case that the delivery of such a presentation minutes would not be recorded in minutes.
11. Mrs Pearse's evidence, which I accepted and which was captured in my judgment at paragraph 48, was that committee minutes are not verbatim. That is of course not the same thing as saying that minutes would never refer to a Powerpoint presentation. That is not a point which was put to Mrs Pearse in terms; her evidence regarding the minutes was given in answer to a question on a different point. I cannot infer, from the answers she gave to the Tribunal, that her evidence was that minutes would never refer to a Powerpoint presentation as having been given. What I do take from her evidence was that the fact that the minutes of a particular meeting did not refer to a Powerpoint presentation was not evidence that no such presentation was delivered.
12. It was not suggested to Mrs Pearse in the course of cross-examination that it would have been "highly irregular" to deliver a Powerpoint presentation to the Policy and Finance Committee. And of course, it follows from what I say above that the fact that minutes of previous Policy and Finance Committee Meetings did not refer to a Powerpoint presentation does not mean that no such presentation was delivered. That is, again, a point which was not put to Mrs Pearse (or any of the Respondent's other witnesses) in cross-examination. The Claimant's application is based on a mischaracterisation of Mrs Pearse's evidence.
13. The Claimant's second point related to Mrs Pearse's characterisation of previous reviews of the Blakehay Theatre in 2016 and 2019 as not being full reviews. That was put to Mrs Pearse in terms in cross-examination. Her evidence was that the previous reviews were not full reviews of the box office provision, but were suitable for the committee they went to. The Claimant refers to minutes which he says cast doubt on Mrs Pearse's evidence. Those documents were not before the Tribunal, and Mrs Pearse was not taken to them in evidence. She was, however, cross-examined regarding the status of the 2016 and 2019 reviews. I had the opportunity to consider her evidence regarding those reviews in the context of the rest of her evidence. I found her to be a credible witness. The status of the 2016 and 2019 reviews is not a point which went to the heart of my decision.
14. The Claimant's third point is that the Tribunal did not consider his case that his dismissal was orchestrated by Mrs Pearse and Mrs Heath. He said that, had the Tribunal done so, it would not have taken into account the two disciplinary matters (for which the Claimant was not dismissed) in

- reaching the conclusion that the real reason for his dismissal was not the fact that he had made a protected disclosure
15. The Claimant's case in that regard evolved somewhat. His pleaded case did not refer to his dismissal being orchestrated by Mrs Pearse and Mrs Heath. Employment Judge Midgley conducted a Preliminary Hearing on 15 February 2022. His case summary and List of Issues did not record that the Claimant's case was that his dismissal was orchestrated by Mrs Pearse and Mrs Heath. I discussed the list of issues with the parties at the start of the final hearing on 22 November 2022. The Claimant did not indicate at that stage that that was his case.
 16. The Claimant's evidence, in the course of cross-examination, was that Mr Nicholson (the Town Clerk, who heard his appeal against dismissal), Mrs Pearse, Mrs Heath, Ms Powell (the Assistant Town Clerk, who took the decision to dismiss him), and Ms Middlemiss (the Assistant Town Clerk responsible for HR) were all part of a conspiracy to get him out of the Council. In his evidence he drew a distinction between the Respondent's officers, who he said conspired against him, and the elected Councillors, who he said were not part of the conspiracy. That was also inherent in the way he put his case to the witnesses in cross-examination. For example, he put it to Ms Powell that the outcome of the redundancy consultation process (which she led) was already decided because of the bad feeling towards him as a whistleblower. Furthermore, in his cross-examination of Mr Nicholson, he was critical of the decision to have his dismissal appeal heard by Mr Nicholson rather than by a panel of Councillors. The clear implication of that line of questioning was that Mr Nicholson deliberately avoided having the matter ventilated before Councillors. The Claimant put it to Mr Nicholson that he heard the appeal himself because he was worried that Councillors might reverse the original decision (which Mr Nicholson denied).
 17. In closing submissions, the Claimant referred to a conspiracy specifically between Mrs Pearse and Mrs Heath. His submission in that regard was expressly based on the proposition that Mrs Pearse and Mrs Heath were friends. I found that they were not friends, and that their relationship was purely professional (Judgment paragraph 22).
 18. The Claimant's submission regarding Mrs Pearse and Mrs Heath was not overlooked, but it was considered in the round alongside his pleaded case, his evidence, and my findings regarding the relationship between Mrs Pearse and Mrs Heath.
 19. The Claimant's final point was that the Tribunal did not adequately take into account the duplication between the witness statements of Mrs Powell and Mr Nicholson regarding the question of whether the Claimant had

been offered training in marketing. Having reviewed the notes of evidence, the fact that the paragraphs were identical was put to Ms Powell in evidence (although not to Mr Nicholson). The point was, in any event, taken into account when considering what weight could be given to the evidence of Ms Powell and Mr Nicholson.

20. Having carefully considered the Claimant's application, and bearing in mind the importance of finality in litigation and the interests of both parties, I am not satisfied that there is any reasonable prospect of the Judgment or any part of it being varied or revoked. The application for reconsideration is therefore refused.
21. Finally, in his application for reconsideration the Claimant indicated that he felt that Mrs Pearse should be investigated for perjury. He asked the Tribunal to advise on whether he should report it to the Police himself, or whether the Tribunal will do so. The Tribunal cannot provide advice to litigants. For the avoidance of any possible doubt, I remain satisfied based on the evidence I heard at the hearing on 23 – 25 November 2022 and my careful consideration of the Claimant's reconsideration application that Mrs Pearse was a witness of truth.

Employment Judge Leith
Dated 27 February 2023

Judgment sent to the Parties on 10 March 2023

For the Tribunal Office