



EMPLOYMENT TRIBUNALS

Claimant: Mr M Jarosinski

Respondent: Nestle UK Ltd

RECONSIDERATION JUDGMENT

1. The claimant's application dated 20 August 2022 for reconsideration of the judgment sent to the parties on 8 August 2022 fails. The Third Judgment of the Tribunal is confirmed.

REASONS

1. In a judgment dated 22 December 2021 and sent to the parties on 5 January 2022, following a 9 day hearing from 15 to 25 November 2021 ("**the Original Judgment**"), the Tribunal dismissed the claimant's claims for wrongful dismissal, direct race discrimination, harassment and victimisation. The complaint of unfair dismissal was upheld, but the Tribunal found that the claimant contributed 100% to his dismissal and that, accordingly, no basic or compensatory awards should be made.
2. On 18 January 2022 the claimant applied for reconsideration of the judgment and for a costs order against the respondent. I considered the claimant's applications for reconsideration and for costs on the papers in chambers on 13 May 2022. In a judgment dated 13 May 2022 and sent to the parties on 24 May 2022 ("**the Second Judgment**") I rejected both applications.
3. The claimant applied for reconsideration of the Second Judgment on 6 June 2022. I considered his application and in a judgment dated 18 July 2022 and sent to the parties on 8 August 2022 ("**the Third Judgment**") his application was refused.

4. On 20 August 2022 the claimant applied for reconsideration of the Third Judgment. Due to an oversight the application was not referred to me until March 2023. I have considered it today.
5. The grounds upon which the claimant applies for reconsideration of the Third Judgment are, in summary, that:
 - a. The claimant obtained new evidence in June 2022 from a witness who it is said knew that the respondent wanted to dismiss the claimant before February 2020;
 - b. New evidence emerged after the final hearing of the claim showing that the respondent settled other Employment Tribunal claims;
 - c. Reconsideration is in the interests of justice;
 - d. The Tribunal fell into error by not listing the reconsideration application for a hearing;
 - e. The Tribunal erred in dealing with the reconsideration application as a judge sitting alone;
 - f. The Tribunal seems to have taken into account an irrelevant factor as part of its reconsideration process; and
 - g. The Tribunal appears not to have dealt with key points in the claimant's application for reconsideration
6. The final four grounds upon which the application for reconsideration is based (which, for the avoidance of doubt, are set out at paragraphs 5(d) to 5(g) above) replicate grounds of appeal contained within a Notice of Appeal dated 30 June 2022. As they allege errors of law and are the subject of an appeal to the Employment Appeal Tribunal, they are not matters that can be considered as part of the reconsideration process. Errors of law, if indeed there are any, are matters that fall to be corrected by way of appeal rather than reconsideration.
7. I have therefore carefully considered the claimant's application for reconsideration of the Third Judgment on the basis of the first three grounds contained within that application (summarised at paragraphs 5(a) to 5 (c) above).
8. Rule 70 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("**the Rules**") provides that a Tribunal may reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original judgment may be confirmed, varied or revoked. The overriding consideration when dealing with applications for reconsideration is 'is it necessary in the interests of justice' to reconsider the judgment.
9. The first ground upon which the claimant seeks a reconsideration is that new evidence became available in June 2022 which shows that

the respondent was aiming to sack him. It appears that that evidence was not available to the claimant at the time of the final hearing in the case, which took place in November 2021.

10. Whilst the availability of new evidence is relevant to the question of reconsideration, in these circumstances of this case the availability of the new evidence does not make it necessary in the interests of justice to reconsider the Third Judgment or even the Original Judgment. The Tribunal has already found that the claimant was unfairly dismissed and the evidence which the claimant now seeks to introduce appears to be relevant only to the question of unfair dismissal, on which the Tribunal has already found for the claimant. It is difficult to see, based on the claimant's application for reconsideration, how the new evidence could be relevant to the Tribunal's findings on contributory conduct or Polkey, or its conclusions on the allegations of discrimination.
11. It would not be in the interests of justice to relitigate a 9 day hearing merely on the basis of the availability of evidence which is likely to be of marginal if any relevance.
12. The second ground upon which the claimant seeks a reconsideration is that he has new evidence to show that the respondent settled other claims made by other employees. It is difficult to see what relevance, if any, that has to the claimant's case. Detailed evidence and submissions about the way the respondent treated the claimant was considered at the final hearing of the claim, and conclusions have already been reached on that evidence. It would not be in the interests of justice to relitigate the case on the basis of evidence which appears to be of little if any relevance.
13. The final ground upon which the claimant seeks a reconsideration is that reconsideration would be in the interests of justice. Whilst that is of course the key consideration in any decision on reconsideration, the claimant has failed to set out or show why reconsideration is necessary in the interests of justice.
14. For the above reasons it is my view that there is no reasonable prospect of the Third Judgment being varied or revoked. The reconsideration application therefore fails.

8 March 2023

Employment Judge Ayre