EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4110531/2021

Held in Glasgow on 20 March 2023

Employment Judge D Hoey

Mr L Ramos **Claimant**

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

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant's further application for reconsideration of the judgment refusing to reconsider the judgement issuing a preparation time order against the claimant dated 15 September 2022 contained in his communication of 17 March 2023 is refused, there being no reasonable prospects of the original 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 a preparation time order against the respondent. That application was refused, the facts not supporting the application. That was a decision of the full Tribunal. The claimant applied for reconsideration of that

decision, which was refused, there being no reasonable prospects of success to argue that the decision not to make the award should be reviewed.

Preliminary consideration

3. By email dated 17 March 2023 the claimant sought further reconsideration of the refusal to make a preparation time order in the claimant's favour.

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

5. The claimant relies upon it being in the interests of justice to reconsider the decision not to make a preparation time order in his favour. There are a number of grounds relied upon by him in support of this further application each of which is considered in turn.

The specific grounds considered

6. In his application the claimant provides a number of grounds in support of his application which are considered in turn.

Judge in chambers

7. The claimant noted he was informed that the application would be heard by a judge in chambers. The claimant argues it was concealed to him and that I had failed to advise him I would be the judge making the decision. Given the claimant was asking the Tribunal to reconsider its own judgment it was not surprising it would be the same panel consider the judgment, had the matter passed the initial stage, all in terms of rule 70. The claimant is well versed in Employment Tribunal practice, including the practice with regards to reconsideration. I did not consider this to be a ground that resulted it being in the interests of justice to revisit the original decision of the full panel.

Judge is prejudiced

8. The claimant argues that another judge should hear his application. The

claimant's application followed the hearing and the panel that heard the claim decided the matter. The claimant seeks another judge to reconsider the matter. The panel considered all the information before it the claimant had. There has been no material provided by the claimant that provides any reasonable basis to suggest the original decision should be varied or to suggest that another judge should hear this matter.

Claimant believed he would be present and judge is biased

9. The claimant refers to the fact I decided the matter be heard in chambers. That was because both parties had indicated that they had provided all the material they wished taken into account. The claimant in this further application provides no substantive material or evidence that supports the assertion that the original decision should be varied. The fact I have been the judge allocated to determine this case is consistent with the practice operated in many jurisdictions to allocate judges to files to ensure matters are progressed fairly and expeditiously.

10. I do not accept the claimant's argument that since I have dealt with his claim for "many months since August 2022 and has been in charge of all the hearings since this time" that I have "monopolised [his] claim". As the allocated judge I ensured any application the claimant made was properly considered and dealt with. The claimant is able to appeal against any decision in the usual way if he considers there to be grounds of appeal. The panel considered the evidence and submission of the parties and made a unanimous decision on that basis. I did not consider that I "should have let another judge to deal with this in Chamber hearing of 1 March 2022 for a question of fairness and democracy". The claimant's applications were fairly considered, all of the material the claimant having produced having been considered and the decision reviewed. There was no basis to support the suggestion

the original decision should be varied in any way. It is in the interests of justice not to vary the decision for the reasons given at the time.

11. The claimant argues he was "misled" because the hearing would be in chambers and yet the claimant was not present. The claimant and respondent were given the opportunity to set out any facts or evidence which supported the suggestion it was in the interests of justice to revisit the original decision. The parties did so and no further information was presented. There was no basis for a hearing with the parties present, since both parties had provided all the material on which they relied and had sufficient time to ensure anything they wished considered was brought to the Tribunal's attention. There is no suggestion in the claimant's current application that he would have raised any new matter or that any matter that was raised was not properly considered. All the information relied upon by the claimant in support of his position was fully considered.

Justice being perverted

12. The claimant asserts that as I have "dealt with my claims on so many occasions [I have] become prejudiced against [him. And, as a consequence the course of justice has been perverted. This is demonstrated by the fact the [I have] been too lenient with the respondent during this hearing of the 01 March 2023 because [I say] in paragraph 25 of this judgment *"The respondent's actions in their conduct of the case and in their failure to comply with the orders issued was not unreasonable"* However, this is wrong because not to comply with an order and let alone two is always an unreasonable behaviour."

13. I disagree with this analysis. I have dealt with the claimant's claims as I was the judge who heard the claimant's claims together with 2 members. The decision not to award the claimant a preparation time order was made by the full panel having taken into account everything

the claimant provided. The respondent did not act in such a way as to engage the power to make the order and it would not have been in the interests of justice to do so, for the reasons the Tribunal set out. That was the unanimous view of the panel and the claimant has produced no information to suggest that the original decision should be reviewed in any way. The respondent's approach was not perfect but the panel did not consider the respondent's actions such as to engage the power to make the order sought by the claimant nor would it have been just or proportionate to do so. The impact of the respondent's actions and the effect upon the claimant was fully taken into account when the order was refused. There is no basis to review the original decision. It is not in the interests of justice to do so. The claimant may be unhappy with the consequence of the respondent's actions but the Tribunal applied the law to the facts as made its decision.

Respondent's actions said to be unreasonable

14. The claimant also argues that "Judge Hoey is wrong to say also in paragraph 25 of the judgement *"The respondent's conduct in no way detrimentally affected the claimant with regard to this claim or his pursuit of it"* because the reason why I made this application for a Preparation Time Order of £287 was not because the respondent's conduct was detrimental to me with regard to my claim or my pursuit to of it because it was because I had to spend 7 hours of additional work as explained in my email of the 10 November 2022 because the Respondent did not comply with these two orders. These seven hours of work have been done so I should have been awarded this Preparation Time Order of £287."

15. The Tribunal considered this matter together with the evidence before it. The respondent accepted that the advert relied upon was as the claimant said it was. The respondent's failure to provide the advert (which

they did not retain) was not such a failure in the Tribunal's view to justify the order the claimant sought. That was a decision reached after a full consideration of the evidence and context. The Tribunal was aware of the impact of the respondent's actions. The Tribunal took the facts into account and the impact upon the claimant. The Tribunal unanimously concluded the position was not such as to engage the provisions of Rule 76 and it was not in the interests of justice to make the Order sought on facts applying the legal position.

No reasonable prospects

16. 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.

17. The Tribunal took full account of the material provided by the claimant, including the issues he raises in this further reconsideration application. The Tribunal was unanimous in the view that the respondent's conduct was not such as to engage the terms of rule 76. The Tribunal was satisfied that the respondent had not acted vexatiously, abusively or otherwise unreasonably in its actions and the claimant's submissions in that regard were not upheld. The Tribunal unanimously concluded from all the evidence before it that the grounds set out in rule 76 were not engaged and that it was not reasonable just and proportionate to issue the order sought by the claimant, having taken account of all the evidence in this case. None of the factors relied upon by the claimant in this further reconsideration application alters the position which was arrived at following the Tribunal's full and fair consideration of the all the evidence and submissions provided by the claimant. The claimant has provided no material in this further application that supports the assertion that it was not just to refuse the original application.

The law

18. 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).

19. 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.

20. 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."**

21. 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."**

22. 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.

23. This further application amounts to an attempt to reopen the argument to seek to change a decision with which the claimant disagrees. The Tribunal reached a unanimous decision and the claimant has raised no factors that support the argument the original decision should be reviewed.

Conclusion

24. 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.

25. 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. The decision not to make the order was consistent with the evidence and authorities and was just.

26. There is no basis to find that the Tribunal's unanimous decision to refuse the claimant's application was wrong or should be reviewed.

27. 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.

28. The claimant is reminded of the rules with regard to an appeal to which he

should have regard if he believes there to be an error of law in the Tribunal's decision.

Employment Judge: David Hoey
Date of Judgment: 20 March 2023
Entered in register: 21 March 2023
and copied to parties