



EMPLOYMENT TRIBUNALS

Claimant: Mr L Yu
Respondents: (1) Federal-Mogul Controlled Power Limited
(2) Tenneco Inc

JUDGEMENT FOLLOWING RECONSIDERATION

The application for reconsideration is refused as having no reasonable prospect of success.

REASONS

1. In this claim oral judgment was given on 26 January 2023; judgment sent to the parties on 30 January 2023 and written reasons sent to the parties on 3 March 2023.
2. By email of 17 March 2023 the Claimant applied to reconsider the judgment. I was made aware of this application on 27 March 2023.

Reconsideration Application

3. The application is made on the following grounds:
 - 3.1. interest should have been awarded on the holiday pay award;
 - 3.2. the Respondent did not comply with a case management order, made by EJ Russell in relation to the age discrimination claim.
 - 3.3. the Second Respondent's ET3 was not presented in time.
 - 3.4. the Claimant queries whether he has been disadvantaged by there being no witnesses from the Second Respondent at the hearing.

Legal Principles

4. Under Rule 70 of the Tribunal Rules 2013, a Tribunal may reconsider a judgment by varying, revoking or confirming it where '*it is in the interests of justice*' to do so.

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5. Under Rule 72 of the Tribunal Rules, if the employment judge considers the application has '*no reasonable prospects of success*', she shall refuse the application and inform the parties. Otherwise the Tribunal shall send a notice setting out the timetable for response.
6. The interests of justice generally require finality. The Claimant cannot raise an issue now if it was possible for him reasonably to do so before or at the final hearing, unless there are exceptional reasons.
7. The Tribunal powers are limited by statute. The Tribunal did not have a statutory power to award interest on the award of outstanding holiday pay. The only relevant regulation is the Employment Tribunals (Interest) Order 1990, which provides for interest on a tribunal award *itself* if it remains unpaid after a certain period of time, but an unpaid award is not a matter for reconsideration of the judgment.

Decision

Interest

8. The tribunal had no legal power to award interest on the holiday pay sum. This argument therefore has no prospect of success.

Alleged Failure to Comply with Case Management Order

9. The Claimant raises for the first time whether the Respondent complied with an order in relation to the provision of information. The Claimant ought reasonably to have known about this alleged failure before or during the final hearing.
10. EJ Russell ordered the Respondent to complete a table attached the Claimant's draft list of issues by 29 June 2022. This sought information about the ages of certain members of staff. At a second preliminary hearing on 8 July hearing EJ Drake checked whether EJ Russell's orders as at that date had been complied with and it was confirmed they had. The Claimant therefore did not raise this issue as a problem at that second preliminary hearing.
11. At the full hearing, both parties provided evidence about the ages of certain members of staff who had left and made submissions about the effect of that information.
12. At the full hearing the Claimant did not raise a concern or query about the Respondent's compliance with EJ Russell's order. He did not raise a concern that insufficient information had been provided on age.
13. The Claimant has not provided any reasons why he did not raise the alleged failure to comply with the order before or at the final hearing. He ought reasonably to have known about the failure and therefore should have done so. The finality principle means that is not in the interests of

justice to raise it now. There are no exceptional reasons for reopening this issue. This ground therefore has no reasonable prospects of success.

Date of Second Respondent's ET3 Form

14. The Second Respondent's ET3 form was received by the Tribunal on 1 November 2021, within the time allowed. This ground therefore has no reasonable prospect of success.

Second Respondent's Witnesses

15. It was up to the Respondents who they called as witnesses. The Claimant had been referred at the preliminary hearing to the Rules of the Tribunal and Presidential Guidance on Case Management. These set out the power of the Tribunal to order a witness's attendance. The Claimant did not seek any such order either before or at the final hearing. The First Respondent's witnesses gave sufficient evidence for the Tribunal to be able to decide on the reasons for the restructure and decision to select the Claimant for redundancy. This ground has therefore no reasonable prospect of success.

Conclusion

16. The Claimant's application for a reconsideration of the judgment has no reasonable prospects of success and is refused.

**Employment Judge Moor
Dated: 31 March 2023**