**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case Number: 4110531/2021**

**Held in Glasgow on 11 April 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 dated 20 March 2023 refusing to reconsider the decision not to issue a preparation time order in his favour, contained in his communication of 4 April 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 in light of the rules. 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. On 20 March 2023 that application was refused there being no reasonable basis for reconsideration of that decision, it not being in the interests of justice to do so.

4. The claimant by email dated 4 April 2023 has made a further reconsideration application of the refusal to reconsider that decision.

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

6. 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.

**Matter considered by full panel and not Judge alone**

7. The claimant alleges that "*Judge Hoey lied to me because he caused me to believe that the hearing "in Chambers" of the 01 March 2023 about my application for a Preparation Time Order will be conducted by a judge alone but in reality it was conducted by a panel of three members*".

8. The claimant noted that in the Notice of hearing of 23 February 2023 it was stated: *"Parties are not required to attend the hearing in any capacity as the hearing will be conducted by an Employment Judge in chambers"*

9. The claimant notes that in fact the decision was made by the full panel that heard his original claim. He argues that "Hence, the truth was concealed from me and I was misled by this Notice of Hearing which says that this hearing will be conducted "in Chambers" by an Employment judge alone".

10. Having reviewed matters and the case file, the administrative notice that was

issued to both parties stated that the hearing would be conducted by a judge alone. The judgment that was issued correctly notes that the decision that was taken was made by the panel that heard the claimant's claim.

11. In terms of rules 75 to 79 it is for "the Tribunal" to determine the claimant's application. It was in the interests of justice for the panel who heard the claimant's claim to hear and determine his application which it did.

12. There was an administrative error in the notice of hearing. That error indicated the judge alone would make the decision but the error caused the claimant no prejudice since the decision reached was unanimous and was determined by the panel that heard the claimant's claim – the Employment Judge and both non legal members. That ensured that the claimant's application was fully and fairly considered and all the points the claimant raised were examined.

13. The administrative error was entirely inadvertent and did not adversely affect the claimant. The error in no way had any impact upon the decision that was made. There is no basis for varying the original decision because of this error, which caused the claimant no prejudice whatsoever.

**Application considered in chambers**

14. Next the claimant argues that: "*Judge Hoey lied to me also because he caused me to believe that my application for a Preparation Time Order will be heard "in Chambers"; however, "in Chamber" means that the public is not allowed to attend but the parties are allowed to attend. Hence, in reality this application was considered "on papers" and not "in Chambers*""

15. Following upon the claimant's application having been made, the parties were asked how the application was to be considered given they had provided extensive written submissions. The parties were content for the matter to be determined in chambers. There is no suggestion from the claimant that he has further information that he wished taken into account. All the information the claimant presented was taken into account (and no further information has been provided to suggest the claimant wished other matters to be taken into account).

16. While the claimant may not agree with the decision that was reached, all the information he provided was fully taken into account in full and no further information has been provided to suggest the decision was wrong or should be varied. There is no prospect of varying the decision given the matter was determined on the information both parties presented and there being no further information from the claimant he wished taken into account.

**Preparation Time Order application considered by the Tribunal**

17. Next, the claimant argues that *"this application for a Preparation Time Order was considered "on papers" not by a judge only as usual but by a panel of three members which is not legal*".

18. The decision was made in accordance with rule 76 which states that the "Tribunal" shall consider the application. It was in the interests of justice for the full panel that heard the claimant's claim (the Tribunal) to consider his application. The decision reached was unanimous and full reasons were given for the decision. The claimant has not provided any information to suggest the decision that was made was in any way wrong or should be varied. The procedure that was followed complies with the terms of rule 76. There is no basis to reconsider the decision.

**Consideration of application in chambers**

19. Next the claimant alleges that "*it is illegal that a panel of three members meets secretly to consider an application without the parties being allowed to attend*".

20. The parties had agreed that their written submissions should be provided and considered in chambers as there was no further information to take into account. The claimant and respondent were given the opportunity to present all the information they wished considered and for the matter to be determined. That occurred. That approach is consistent with the rules. Rule 77 states that no order should be made until the parties have had a reasonable opportunity to make representations (in writing or at a hearing as ordered by the Tribunal). In this case the parties were given a choice. The parties were content for the matter to be dealt with in chambers. In any event

there is no right to a hearing. In this case it was in the interests of justice for the matter to be determined in chambers. All the information the parties wished to be considered was provided in writing (and nothing has been raised to suggest anything was omitted). Each of the points the claimant raised was fully considered. It is not in the interests of justice to review the decision as there is no basis to review the decision that was made, which took full account of all the points the parties wished to be considered in accordance with the rules and interests of justice. Part of the overriding objective is to ensure due consideration is given to cost, which includes cost to the public purse. The overriding objective was secured by the process adopted in this case.

**Suggestion of bias on part of Employment Judge**

21. The claimant then alleges: "*Hence, Judge Hoey has lied to me which is evidence of bias against me. Therefore, I would like that his decision of the 20 March 2023 to reject my application of the 17 March 2023 for the reconsideration of the judgement sent to the parties on the 03 March 2023 refusing my application for a Preparation Time Order of £287 is reconsidered because it is in the interest of justice because it has been taken by a judge who is biased against me i.e. Judge Hoey*".

22. This is a serious allegation that is not properly the subject of a reconsideration application but is a matter the claimant should raise as an appeal, if so advised.

23. It is relevant to note that the decision about which the claimant complains was taken by a full panel (and not the Employment Judge alone). The full panel included the 2 non legal members of the Tribunal and considered all the information the claimant presented and reached a decision on the facts applying the law. The information presented was fully considered and a decision reached applying the law.

24. The claimant argues that "*The fact that judge Hoey is biased against me has perverted all these proceedings since Judge Hoey has started to deal with them. Therefore, I would like that all the others decisions taken by Judge Hoey are also reviewed i.e. his decision to impose on me a Preparation time order*

*of £697 and his decision to reject my claim*."

25. The claimant had previously raised this ground in an attempt to have the decision made reconsidered. It was refused there being no reasonable basis to conclude that the fact of being an allocated judge creates a perception of bias. The judge allocated to this case determined the case applying the law to the facts. It is common for judges to be allocated cases given part of the overriding objective to ensure cases progress expeditiously. The fact a judge was allocated to this case is not, by itself, evidence of bias. The decision reached was a unanimous decision of the panel and considered all the evidence and applied the law to reach a decision. There is no basis for reviewing the decision in this case.

26. The claimant concludes by asserting: "*I would like that all these decisions from judge Hoey are reviewed by a panel of three members but with another judge that Judge Hoey and that the parties this time are allowed to attend this hearing*." There is no information to support the serious allegation the claimant makes in this application. The panel determined each of the claimant's claims in a fair and reasonable way consistent with the facts and law.

27. The claimant has the right to appeal against the decision in the event he believes there is an error of law. There is no basis to reconsider any of the decisions reached for the foregoing reasons. The decisions were made on the basis of the information before the panel having applied the law.

**No reasonable prospects**

28. 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.

29. 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.

30. The administrative error in the notice of hearing was an administrative error and caused no prejudice to the claimant whatsoever. The decision was taken by a full panel which considered all the information the claimant provided. There is no further information the claimant now provides to support his argument that the decision should be reviewed. The panel fully considered the facts and applied the law in reaching its decision.

**The law**

31. 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).

32. 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.

33. 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***."**

34. 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.***"**

35. 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 and taking account of cost (both to each party and to the public purse). 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.

36. 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 from the facts presented by both parties (with no further facts having been provided) applying the law. The claimant has raised no factors that support the argument the original decision should be reviewed.

**Conclusion**

37. 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.

38. 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 refusal to reconsider the decision being varied or revoked. The points raised were fully considered and addressed by the panel 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.

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

40. 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.

41. 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:** **D Hoey**
**Date of Judgment:** **13 April 2023**
**Entered in register:** **18 Apri 2023**
**and copied to parties**