



EMPLOYMENT TRIBUNALS

London South Employment Tribunal (video) on 22nd February 2023

Claimant	Between	Respondent
Mr Theodosios Theodosiou	&	Kindred (London) Limited
Before		Appearances
Judge M Aspinall (sitting as an Employment Judge)		None

APPLICATION FOR RECONSIDERATION Decision

1. The Claimant's application, dated 14 March 2023, for reconsideration of the judgment sent to the parties, on 1 March 2023, is refused as I do not find that there is any reasonable prospect of it being varied or revoked.
2. By email presented to the tribunal on 14 March 2023 (with an accompanying letter), the claimant applied for reconsideration of the judgment sent to the parties on 1 March 2023.
3. A Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.
4. Under Rule 72(1) of the Employment Tribunal Rules of Procedure 2013, such an application is to be refused, without the need for a hearing, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked.

The original judgment

5. On 22 February 2023, via a video link (CVP), I conducted an Open Preliminary Hearing with the Claimant and counsel for the Respondent (Miss Greenley).
6. At the conclusion of the hearing, having heard from the parties and on taking time to consider the matters before me, I gave my decision that the claims had – "...no reasonable prospect of success as it is, from all the pleadings and despite all attempts by the Respondent, injunctions, exhortations, and orders of the Tribunal (and despite being given every opportunity to explain them to me today) neither explained nor clear on what basis the Claimant says any disclosures that he made would fall within section 43B of The Employment Rights Act 1996".
7. In respect of additional claims which were potentially raised by the Claimant, I similarly found that these were "...without reasonable prospect of success:

- a. The newly intimated claim of disclosures in relation to the promotion of unhealthy gambling are, similarly, without reasonable prospect of success:
 - i. They have only been raised recently and were not pleaded at any earlier stage.
 - ii. They, like the other claims, do not exhibit characteristics that would place them within the ambit of section 43B of the Act.”
8. That decision was distilled into a written judgment and promulgated. It was sent to the parties on 1 March 2023. It was, based on what the Claimant subsequently stated in his email, received by him on the same day.

Application for reconsideration

9. The Claimant noted that the decision I made was based on the question of whether the claims he had brought had a reasonable prospect of success. He stated that I “...did not say that I had no chance of success, but rather expressed doubts whether or not my claims would be successful. In fact, towards the end of the hearing, the Judge was unsure about his assessment of my prospect of success and took a break to decide which way his decision would go. It looked like it could have gone either way. That fact alone, is an indication that the Employment Judge who made the decision, didn't have a clear conclusion that there was no reasonable prospect of success.”.
10. With respect to the Claimant, that is not an interpretation that bears the considerable weight he seeks to attach to it.
11. Quite properly, during the hearing, I listened to submissions from the Claimant and the Respondent. I asked questions and – as the Claimant was unrepresented – I explained the applications made by the Respondent and my thinking to him as we proceeded. This enabled him to marshal his arguments and to better understand what was taking place.
12. Having heard all the submissions I did what most reasonable people would expect of a Judge. I paused to consider what I had heard. I evaluated the submissions, the claims brought, the pleadings made by the Claimant. I looked at the Equality Act and Employment Rights Act to ensure that I was properly applying the law. Having done so, I was satisfied that the Claimant had entirely failed to properly plead any claims that could be said to have any prospect of success.
13. His initial claim to the ET was made on 28 April 2022. In the 10 months that followed he had been asked by the Respondent to provide further particulars of his claim (he refused), he was ordered by the Tribunal to provide better and further particulars (he did not). There were multiple correspondences between the parties and between the parties and the Tribunal – the majority of which were trying to illicit necessary information from the Claimant in relation to his claims; such information as would enable the Respondent to reply to his claims and would allow the Tribunal to assess whether any valid claims had been brought.
14. Up to the date of the hearing before me, he had not done so. He did not take the opportunity of the hearing before me to do so either; he was somewhat insistent that we ought to allow him to plead his case before the Preliminary Hearing listed in July 2023 (which I vacated after striking out his claims).
15. In his letter of 14 March 2023, he takes issue with the fact that the Open Preliminary Hearing was even listed: “The additional Preliminary Hearing on the 22nd of February should have never been listed, as there was already a Preliminary Hearing listed for July. The order for the additional Preliminary Hearing in February with extremely short notice, created an unfair situation for me and jeopardized Justice.”
16. I disagree with that reasoning. The hearing on 22 February (an Open Preliminary rather than the closed one listed in July 2023) was scheduled at the behest of an Employment Judge who had observed that the Claimant had, despite all entreaties, failed to particularise any of his claims in a manner that meant that they could be understood. That is not a situation that, in the interests of justice, could simply continue.

17. I was satisfied that the Claimant was wilfully, by the end, refusing to tell the Respondent what the case was he wanted to bring against them. This was despite all orders made by Judges of the Tribunal. Indeed, in repeated correspondence between the parties, the Claimant refused to tell the Respondent what his case was because he didn't consider that he needed to do so before the trial. Again, orders of the Tribunal did nothing to disabuse him of this incorrect thinking.
18. The Claimant takes aim at the fact that the question around prospect of success was asked at all. He says that it should have waited for the final hearing or, at the very least, for the preliminary hearing listed in July 2023.
19. This was an argument he deployed at the hearing before me on 22 February and it was one that I squarely rejected. The Tribunal cannot allow a case to proceed to a final hearing where there is no prospect of it being successful; not least because, in this case, the Respondent would have had no way of knowing the nature and quality of the case they had to answer. The Claimant seemed to labour under the belief that he should not have to tell anyone what his case was before the final hearing – and he appeared unable, or unwilling, to understand that this would mean that the Respondent would be incapable of defending itself at all. Not only that but they would not have any idea what witnesses to call, what evidence to disclose, what questions to ask. Perhaps that would make for a nicer outcome and an easier time for the Claimant but it would be a clear affront to justice.
20. I accept that the Claimant feels strongly that there are issues that need to be ventilated. However, his deeply held convictions cannot and must not be allowed to overturn the operation of proper due process.
21. The simple truth is that after he filed his claims, the Claimant did not want to tell the Respondent anything else. He disregarded, wilfully misinterpreted, ignored instructions, orders, exhortations from the Tribunal to the contrary. On the basis that, by the time the case came before me, it was impossible to see how the claims he made fell within the statutory frameworks for those kinds of claim, I could do nothing else but find that they had no reasonable prospect of success.

Judge M Aspinall

Date: 2 April 2023

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