EMPLOYMENT TRIBUNALS

Claimant: Mr B Handford

Respondent: Ms Y Shkop

JUDGMENT

The Claimant's application dated 21 February 2023 for reconsideration of the judgment sent to the parties on 7 February 2023 is refused.

REASONS

Apology and preliminary observations

1. The Tribunal apologises for the delay in the parties receiving any response to the Claimant's application for reconsideration dated 21 February 2023. The judgment that is subject to the application was sent to the parties on 7 February 2023 ("ET Judgment").

2. The application was received by the Tribunal service at 23:33 on 21 February 2023. However, it was unfortunately not provided to the Tribunal soon after this. On 4 April 2023, the Tribunal were provided with the Respondent's application for costs and the Claimant's reply to that. This same day, whilst initial reading these documents, the Tribunal noticed reference to an application for reconsideration which it had not seen. Accordingly, enquiries were made with the Tribunal service by the Tribunal on 4 April 2023 and also on 12 April 2023. Fortunately, on 20 April 2023 the reconsideration application was provided to the Tribunal by the Tribunal service.

3. As noted, the application was received on 21 February 2023 by the Tribunal service. It is evident from the Claimant's 5-page application for reconsideration that it is only the "*3. The Claimant's complaint of automatically unfair dismissal under s.100(1)(c) Employment Rights Act 1996 is not well-founded and is dismissed*" of the ET Judgment that is subject to the application. Whilst the application itself does not refer to date the judgment was sent to the parties nor to the rules found in Schedule 1 of Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("ET Rules"), it is obvious that the

Claimant is seeking reconsideration under r.70 ET Rules of the ET Judgment. This provides:

> *A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again*.

4. Moreover, it is evident that the Claimant is seeking to rely upon r.71 ET Rules, has made his application in time, and there are three arguments for why it is alleged the judgment dismissing the claim of automatically unfair dismissal should be reconsidered, namely:
   4.1. The Tribunal erred in characterising the 5 July 2021 meeting as brief;
   4.2. The Tribunal misquoted the transcript of the covert recording;
   4.3. The Tribunal conclusions on Mr Alijev's translation of the meeting was made without affording the parties the opportunity to address it.

5. In determining this application, the Tribunal must first consider under r.72(1) ET Rules to determine whether there is "*no reasonable prospect of the original decision being varied or revoked*". This initial stage, sometimes referred to as a 'sift stage' is mandatory *H White & Sons Limited v Ms K White UKEAT/0022/21* [57] and *Shaw v Intellectual Property Office* UKEAT/0186/20 [80]-[81]. Ordinarily, at this 'sift stage' there is no input from the responding party (*Shaw* [81]-[85]) and accordingly the Tribunal has not considered any representations by the Respondent in reaching its decision under r.72(1) ET Rules.

6. The Tribunal deals below with each of the Claimant's three arguments in turn but has concluded that there is no reasonable prospect of the original decision being varied or revoked. Accordingly, the Claimant's application has been refused.

Argument 1: Tribunal erred in characterising the 5 July 2021 meeting as brief

7. The Claimant's first argument to support reconsideration of the dismissal of the automatic unfair dismissal claim is that the 5 July 2021 meeting was not "*brief*". The conclusion stating this is out in the ET Judgment at [45].

8. The Tribunal concludes that even if the meeting were found to have been 'long' or not brief that has no reasonable prospect of altering the decision to dismiss the claim of automatically unfair dismissal. This is because:
   8.1. the case was that he had not raised the health and safety matter directly with the Respondent (ET Judgment [67.1]). By this what is meant is that the issues were clear that it was what happened at the meeting on 1 July 2021, and not 5 July 2021, that was relevant (ET Judgment [2.2]). So, arguments that matters were raised in this meeting because it is long are a new case that was not part of the agreed issues;
   8.2. even assuming that the meeting was 'long', and ignoring the point above, it does not detract from the critical conclusion of the Tribunal that the decision was made *before* this very meeting. After all, the outcome letter

dismissing the Claimant had already been prepared and the Respondent gave a letter to him at that very meeting (ET Judgment [45]) and the Respondent had already been moved out of the house (ET Judgment [42]). The supposed length of the hearing does not alter this underlying point;

8.3. overall this appears to be an attempt to have an impermissible "*second bite of the cherry*" (see *Liddington v 2gether NHS Foundation Trust EAT/0002/16* [34]).

Argument 2: Tribunal misquoted the transcript of the covert recording

9. The Claimant's second argument is that the Tribunal misquoted the transcript of the covert recording.

10. There has been no misquotation. The Claimant in fact is saying that it not providing the full quotation that this changes the meaning of the words. That has no reasonable prospect of success. This is an impermissible attempt to have a "*second bite of the cherry*", the Claimant seeking to rehearse arguments with perhaps a different emphasis (contrary to the sentiments expressed in *Liddington* above).

11. Indeed, even if the full quotation were provided it does not change the underlying point made which was that no steps were taken in relation to what the Claimant is labelling in his application the "*first threat*". So, the point in ET Judgment 68 would still stand. This means that the only way it could have a difference is apparently if all accept that it was the meeting of the 5 July 2021 that led to the alleged "*concoction*" of a reason to dismiss, as the Claimant states in his application:

> *With this correction of the facts in mind, it becomes evident that the Respondent did potentially take this second approach of concocting a reason (a loss of trust and confidence) to dismiss me when I continued to raise my health and safety concerns in the meeting of the 5 July 2021.*

12. The problem, and the reason there is no reasonable prospect of the judgment being varied, is that the content of the 5 July 2021 was <u>not</u> part of the issues and the claim as being the reason for the Claimant's dismissal as already set out above. The decision had been already made by then. So, providing a full quotation would not make any difference to the underlying findings and conclusions.

Argument 3: conclusions on Mr Alijev's translation of the meeting was made without affording the parties the opportunity to address it.

13. The Claimant's third argument is premised on the Tribunal not allowing the parties to address it on Mr Alijev's translation abilities. This has no reasonable prospects of success as it is premised on a misunderstanding of the Tribunal's judgment.

14. At [67.4] ET Judgment, the part challenged it is stated:
the Respondent spoke Russian and so Mr Alijev would need to communicate in Russian the relevant parts of the meeting that would have given the Claimant s.100(1)(c) ERA protection. Given the above point [namely 'there

were only a few passages in the meeting which needed to be read together and conveyed together to give the Claimant s.100(1)(c) ERA protection. Most of the meeting that lasted 30 minutes did not concern these key aspects'] *it is likely that even if Mr Alijev said anything to the Respondent about the meeting it would not cover in Russian the critical and nuanced aspects of language required for the Respondent to have knowledge of the health and safety issue. Simply knowing a time frame for the recovery, that the Claimant wanted to know if his costs would be covered or that the injury supposedly happened because of chopping lobsters would be insufficient.*

15. The Claimant reads this as a challenge to Mr Aljiev's translating ability. However, that is not what is conveyed in this paragraph and hence there was no need for the parties to be afforded an opportunity to comment on his abilities to translate. The conclusion of the Tribunal was simply that Mr Alijev, as indeed anyone in that position with fluency in relevant language, had relayed information to the Respondent it would be in summary form and that was unlikely to cover the relevant "*critical and nuanced aspects of language*". In other words, the Claimant was having to parse short bits of a meeting in the transcript to get the protection under legislation and Mr Aljiev would most likely have relayed in summary fashion the main points that seemed relevant for the Respondent which would not likely cover sufficient matters to confer protection.

Conclusion

16. In summary, the Tribunal is satisfied on the basis of what is before it that there are no reasonable prospects of the original decision being varied or revoked. The application for reconsideration is therefore refused.

Employment Judge Caiden
24 April 2023

JUDGMENT AND REASONS
SENT TO PARTIES ON 27.4.2023

GDJ

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.