



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr George Ferguson-Haizel**

**v**

**Tesco Stores Limited**

## **REFUSAL OF THE CLAIMANT'S APPLICATION FOR RECONSIDERATION OF THE JUDGMENT SENT (WITH REASONS) TO THE PARTIES ON 23 MARCH 2023**

1. This application is refused under Rule 72 of the Rules of Procedure on the grounds that, for the reasons summarised below, there is no reasonable prospect of the judgment being set aside or varied.
2. The application is made by a 12 page statement containing 75 paragraphs. Although the text contains a number of what might appear to be headings highlighted in bold, the text beneath them does not necessarily relate to the apparent heading. Hence, I have tried to identify the particular points being made from the text itself.
3. Paragraph 2 deals with freedom of speech and maintains that the freedom to speak inoffensively is not worth having. It was not alleged by the Claimant at the hearing that his dismissal was unfair because it infringed the right to freedom of expression. As we found, for most of the material period he refused to engage with the allegations against him. However, before us he agreed that what he was alleged to have done amounted to gross misconduct.
4. The reference to the 30 January application in paragraph 3 is not understood. We dealt with all preliminary issues put before us and considered the considerable number of email and letter exchanges between the parties where material to our decision.
5. Paragraphs 4 and 5 deal with the reason for dismissal. We set out our detailed reasoning on this bearing in mind (and rejecting) the Claimant's assertion that he was dismissed for making protected disclosures. These paragraphs repeat points made to us. Paragraphs 15 to 23 seek to summarise parts of the Claimant's arguments with regard to his being dismissed for making protected disclosures. Our material findings of fact and the application of the law to them are set out in our Reasons. Repetition of arguments already dealt with does not justify a reconsideration of a judgment.

6. Paragraphs 6 to 13 summarise parts of the evidence on which we made detailed findings of fact. They in no way suggest that our findings omitted to deal with any key matter.
7. Paragraph 14 deals with the Claimant's failures to be selected for the Respondent's apprenticeship scheme. We touched on this in our findings. It was referred to by the Claimant, but was not the subject of any claim for unlawful discrimination before us. Hence, it formed part of the background and was said to support the Claimant's assertion that people of colour were prevented from advancing themselves. Save that he was black and was not accepted onto the programme, the Claimant had no evidence to support this broad assertion and, as we noted, two of the three managers giving evidence before us were women of colour. He gave confused evidence as to alleged unauthorised absence in 2012, to which he refers in paragraph 26. We did not find it of help, or relevance, given the passage of time and the fact that it was impossible to pin down what the Claimant was alleging. The brief reference to it in this application provides no basis for a reconsideration of the judgment. He also raises an incident in 2013 in paragraph 54 which he says demonstrates race discrimination. It related to his being granted a career break of a year and then insisting on curtailing it (and returning to his old shift pattern) after 2 months. We dealt with this in our Reasons. We did not regard it as of great significance and, for the avoidance of doubt, although the issue of whether the Respondent acted as it did because of his race was not before us we would have rejected this. The Respondent was initially reluctant to give the Claimant his old shifts back because they had been allocated to others and it had been made clear to him that when he returned after a year there was no guarantee that he would be given those shifts. Again, this provides no basis for a reconsideration of the judgment.
8. In paragraphs 25 and 30 (and elsewhere) the Claimant relies upon the delay in dealing with the allegations against him. We dealt with that delay. We criticised the Respondent for it, but noted the difficulties it had experienced in dealing with the Claimant and found that his conduct was intended to delay investigation of the matter and then the consideration of it at a disciplinary hearing. As these matters were addressed both before us and by us, they provide no basis for a reconsideration.
9. Paragraph 29 deals with the availability of cctv footage of the meeting of 18 May. What happened at that meeting (which was controversial) was considered by us in detail. We did not deal with the possibility of cctv evidence assisting the Respondent. The evidence we heard (which the Claimant did not challenge) was that the evidence was of very limited assistance as it showed part of the corridor outside the meeting room and had no sound. Crucially, as we found, the disputes as to how the meeting progressed could be resolved by looking at the notes of the Claimant's telephone call with them provided (at his request) by his trade union. Those notes recorded a version of events entirely consistent with the Respondent's witness and he provided them to the Respondent. The alleged failure of the Respondent to find that the cctv evidence supported the Claimant is not a new matter. It was raised at the hearing. It is not one of great significance (for the reasons given above) and provides no basis for a reconsideration.

10. Paragraphs 36 to 40 are mainly concerned with revisiting the issue of who was responsible for arranging for a trade union representative to attend the meeting of 18 May (and earlier proposed meetings). We dealt extensively with this in our Reasons. The Claimant's desire to reargue the point does not provide a basis for reconsideration.
11. Paragraph 43 contains a summary of the Claimant's criticisms of the appeal hearing. We made detailed findings on that and there is no basis set out for reconsidering them.
12. Paragraph 44 contains an assertion that the Respondent acted contrary to s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992. No such claim was before the Tribunal. In any event, the factual basis of the assertion appears to run contrary to the Tribunal's factual findings. There is no basis for any reconsideration of the judgment.
13. Paragraph 48 appears to be a criticism of the Tribunal's approach to ascertaining the issues in the case. The route to their ascertainment and the Claimant's attempts to re-open claims already dismissed are summarised at the beginning of the Reasons. This very general assertion provides no basis for reconsidering the judgment on the matters before the Tribunal.
14. Paragraph 52 seeks to re-open the issue of the earlier complaint had been withdrawn. That issue was considered by us as was its relevance. The withdrawal of the complaint was not even considered by the dismissing manager, as he was not made aware of it. The Claimant restating his position provides no basis for a reconsideration.
15. Paragraphs 56 to 75 contain some analysis of the Claimant's understanding of certain principles relating to direct race and sex discrimination and, latterly, associative discrimination. It does not appear that the Claimant is suggesting that our summary of the law is wrong, or materially incomplete, or that we misapplied the law. Hence, these paragraphs provide no basis for any reconsideration of the judgment.

**Employment Judge Andrew Clarke KC**

**21 April 2023**

**Sent to parties 27.4.2023**

**For the Tribunal GDJ**