THE EMPLOYMENT TRIBUNALS

Claimant: **Mr A Ikeji**

Respondents: **(1) Office of Rail and Road**
(2) Donald Wilson
(3) Ian Prosper
(4) Matthew Farrell
(5) Victoria Rosolia

Heard at: **East London Hearing Centre**

On: **5 April 2023**

Before: **Employment Judge Russell**

Representation
Claimant: **Mr M Mensah (Counsel)**
Respondent: **Mr G Menzes (Counsel)**

JUDGMENT

The Claimant's applications dated 27 October 2022 and 5 January 2023 for reconsideration of the Judgment and case management orders sent to the parties on 4 January 2023 is refused as it is not necessary in the interest of justice.

REASONS

The Claimant's applications for reconsideration

1 The Claimant made a timely application for reconsideration under Rule 71 by his email sent on 27 October 2022 (albeit before written reasons had been sent to the parties) and repeated on 5 January 2023. In his first email, the Claimant submitted that it was unfair to dismiss his application for interim relief because he had inadequate opportunity to identify material differences in the grievance notes and could only communicate with his legal representative by use of text message during the hearing. I conclude that it is not necessary to reconsider the judgment in the interest of justice for either reason.

2 Notice of Hearing was sent on 15 September 2022. To obtain interim relief, the Claimant would have to show that it was likely at the final hearing that he will establish that the sole or principal reason for dismissal was a protected disclosure. This would obviously require the Tribunal to consider what, if any, information was disclosed and whether it tended to show a relevant breach. The protected disclosure is said to be the email sent on 24 May 2022 which refers to an untruthful account of internal proceedings. In other words, the notes produced by Ms Rosolia. In the circumstances, the Claimant had ample time prior to the hearing to prepare fully and to identify the alleged inaccuracies in the Rosolia notes as part of his case to establish that it was likely that he would show that he had made a protected disclosure. Furthermore, the was given an hour and twenty mins during the hearing to consult with his Counsel to undertake this specific task, but no differences were identified by him.

3 In preparation for this hearing, the Claimant has produced a document dated 10 February 2023 purporting to set out seven material differences between his transcript of the meeting and the Rosolia notes. I looked at each in turn and am satisfied that, as with the example given in the Judgment, the substance of the Claimant's complaints is set out in the Rosolia notes even if the precise words used are not. There is nothing in the differences now identified which makes it likely that the Claimant will show that information tending to show a relevant breach is disclosed in the 24 May 2022 email.

4 The Claimant also seeks reconsideration on grounds that the formal return to work meeting on 10 May 2022 was wrongly described as a catch-up and that there is medical evidence that he was signed off work by his GP when sent home and his pay stopped. The written reasons clearly refer only to a meeting on 10 May 2022 and nothing turns on whether it was formal or informal, what matters is what was said at the meeting. The relevance of pay for the purposes of the interim relief application was that the during the hearing, the Claimant sought to rely on assertion of a statutory right to wages as an alternative sole or principal reason for dismissal. For the reasons given, this undermined the credibility of his case when looked at in the required broad brush way.

5 Having carefully considered the grounds set out in the reconsideration application sent on 27 October 2022, I am satisfied that it is simply a repetition of arguments which the Claimant made at the hearing in an attempt to relitigate points which were considered and rejected for the reasons given. Disagreement with the findings and decision of a Tribunal is not a valid ground for reconsideration.

6 In his email of 5 January 2023, the Claimant applies for reconsideration of the decision to refuse leave to amend the claim brought under section 15 of the Equality Act 2010 to include a further act of unfavourable treatment, namely 'not applying the disciplinary policy, unfair process on the grievance and pay'.

7 The Claimant now seeks to narrow the scope of the proposed amendment to the failure to apply the contractual disciplinary policy from 10 May 2022. However, even in this more narrow form, the Claimant does not make clear which particular part of the policy is said to have been breached. Nor could Mr Mensah identify any specific breach today. I conclude that this is simply an attempt to reargue the application to amend on grounds which could have been, but were not, expressed at the hearing.

8 There are important public policy reasons for the rule of finality in litigation and reconsideration is not an opportunity to improve upon original submissions and or to reframe a proposed amendment to answer a reason for refusing leave for the original amendment. Nor is it an opportunity to continue to express the extent to which a Claimant feels they have been treated unfairly by a Respondent. The interests of justice do not require the refusal of leave to amend to be reconsidered.

9 In addition to the two applications for reconsideration, the Claimant sent an email on 19 February 2023 with further arguments in support which I treated as further information or submissions on the original applications. The Claimant says that errors were made in the assessment of his section 103A claim because he was not allowed to given oral evidence. Rule 95 of the Employment Tribunal Rules 2013 provides that oral evidence shall not be heard unless it the Tribunal directs otherwise. The Claimant did not apply to give oral evidence.

10 The Claimant further says that there were omissions from the list of issues as recorded in the Summary. The list of issues sets out the matters discussed at the hearing. An attempt to expand a list of issues with new matters is not apt for reconsideration of the original decision.

11 The Claimant further identifies a number of what he says are key documents which were overlooked. The Claimant was legally represented at the hearing and the Tribunal read the documents to which it was taken in submissions.

12 The Claimant sought leave to amend to include a claim that his dismissal was automatically unfair because he had asserted a statutory right to pay. Whilst the application for interim relief was made in reliance on a protected disclosure as the sole or principal reason for dismissal, it is evidentially relevant that the Claimant also puts forward a second, alternative reason when assessing the likelihood of the protected disclosure reason succeeding at a final hearing. There was no finding as to the actual reason for dismissal – that is for the final hearing, not an interim relief hearing.

13 Having considered, therefore, the content of each document presented in support of the application for reconsideration and the submissions of Counsel, I conclude that none of the matters raised by the Claimant are such that they would give any reasonable prospect of original decision being varied or revoked. Accordingly, the application for a reconsideration is refused under rules 70 and 72.

Employment Judge Russell

11 May 2023