EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr T Mohammed	**v**	Crown Prosecution Service

Heard at: Reading **On:** 9 and 10 January 2023
And in chambers on 17 January 2023
and 27 February 2023

Before: Employment Judge Hawksworth
Mr J Appleton
Mrs A E Brown

Appearances
For the Claimant: Mr M Jones (counsel)
For the Respondent: Ms C Hayward (counsel)

JUDGMENT ON RECONSIDERATION OF REMEDY JUDGMENT

The claimant's application dated 26 March 2023 for reconsideration of the reserved remedy judgment sent to the parties on 13 March 2023 is refused under rule 72(1) of the Employment Tribunal Rules of Procedure 2013.

REASONS

Introduction

1. A reserved judgment and reasons in respect of the claimant's three claims against the respondent was sent to the parties on 13 December 2021. Some of the claimant's complaints succeeded.

2. A remedy hearing took place on 9 and 10 January 2023, with additional days for deliberation in chambers on 17 January and 27 February 2023.

The reserved remedy judgment and reasons was sent to the parties on 13 March 2023.

3. On 26 March 2023 the claimant made an application for reconsideration of the remedy judgment. He sent an amended reconsideration application on 27 March 2023. I apologise for the delay in providing the decision on the application. The delay occurred because the application was not referred to me until 2 May 2023.

The rules on reconsideration

4. Rule 70 of the Employment Tribunal Rules of Procedure 2016 says:

> *"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."*

5. The requirement that a judgment may only be reconsidered where reconsideration is necessary in the interests of justice reflects the public interest in the finality of litigation.

6. Rule 71 says that an application for reconsideration must be made in writing within 14 days of the date on which the original decision was sent to the parties. Rule 72 explains the process to be followed on an application for reconsideration under rule 71. It says:

> *"(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.*
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> *(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable*

opportunity to make further written representations.

"(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part."

Conclusions on the claimant's application

7. The claimant has complied with rule 71; his application for reconsideration was made within the required 14 days of the date on which the reserved remedy judgment was sent to the parties.

8. Rule 72(1) requires me to consider whether there is any reasonable prospect of the original decision being varied or revoked, that is whether there is any reasonable prospect of a conclusion that variation or revocation of the original decision is necessary in the interests of justice.

9. The claimant's application covers 24 pages and is not always easy to follow. I have considered the application in full and I explain below, in as much detail as is proportionate, why I have decided that there is no prospect of a conclusion that it is necessary in the interest of justice for the original remedy decision to be varied or revoked.

10. The paragraphs in the claimant's application are mostly unnumbered. References to paragraph numbers are to the remedy judgment. References to page numbers are to the remedy hearing bundle.

11. Format of hearing: the in-person hearing was converted to a hybrid hearing. The respondent's witness Mr Maloney and the claimant's witness Mrs Ara both attended by video. Tribunal member Mrs Brown attended in person, not by video as the claimant says. Tribunal member Mr Appleton attended by video. He was able to see and hear the witnesses, and hear the questions put to them and their answers. If he was unable to hear a question or answer at any point, he asked for it to be repeated. Mr Appleton had electronic copies of the bundle and statements, and was able to see all documents referred to during the hearing.

12. Fourth claim: the decision of the full tribunal in the claimant's fourth claim was in the remedy hearing bundle (pages 1,118 to 1,151). The matters

considered and decided on by the tribunal in the claimant's fourth claim were not matters which the tribunal in the remedy hearing of the claimant's first three claims could reopen. It would not have been permissible to revisit those matters. That includes, in particular, the decision that the claimant was not subject to discrimination in respect of his new role at CPSD from 24 September 2018 or his dismissal in April 2020 (see paragraphs 81, 87 and 159 for example).

13. Pay from April 2016 to September 2016: We found as a fact that the claimant received full pay from 13 April 2016 until 16 September 2016. Although the claimant said he received half pay during this period, his pay slips said that he was in receipt of full pay during this time (pages 166 to 171). Our finding was based on the payslips (paragraph 34).

14. Past loss for April 2016 to September 2018: the claimant says he is entitled to past loss for this period. We have compensated for past loss for this period, applying a 20% reduction to reflect our finding that there is a 20% chance that the claimant would have been on sick leave during this period in any event (see the summary in paragraph 132 for example).

15. Dismissal: the claimant's dismissal in April 2020 was not part of the admitted discrimination or the claims before us (claims 1-3). We decided that losses following the claimant's dismissal were not caused by the discrimination (see paragraphs 87 and 150 for example).

16. Provision of an auxiliary aid: the claimant suggests that his reasonable adjustments complaint may have been better framed as an auxiliary aid case rather than a PCP case. He refers to the decision of the EAT in *Mallon v Aecom Ltd* 2021 ICR 1151. That is a liability issue, and was not a matter for the tribunal at the remedy hearing. In any event, in the claimant's case, none of the admitted failures to make reasonable adjustments (paragraph 5) are better seen as auxiliary aid issues.

17. Expert medical evidence: the claimant says it was inappropriate to allow the unilateral instruction of experts by the respondent. Paragraph 13 explains the background to the instruction of experts. It says that permission for the respondent to obtain its own expert medical evidence was granted on 6 October 2022 and explains that this was because the respondent had been unable to agree the terms of joint instructions with the claimant who was unrepresented at the time. The claimant did not appeal or otherwise challenge that case management order. We took into account that one of the expert reports was produced without an interview with the claimant, as the claimant did not attend the scheduled zoom meeting with the expert (paragraph 60). It was appropriate to take the expert evidence into account.

18. Losses after 24 September 2018: we have found that, after 24 September

2018, when he returned to work in a new role with reasonable adjustments, the claimant did not suffer financial losses caused by the discrimination (other than loss of sick pay during the period 13 July 2019 until his dismissal on 23 April 2020, when earlier sickness absence arising from the discrimination impacted on his later sick pay entitlement) (paragraphs 81 to 88 and 159 for example). For this reason, financial loss was not calculated on a career loss basis, and the question of the claimant's ability to find another similar job was not an issue for us.

19. Provision of reasonable adjustments: questions about the respondent's failure to make adjustments for the claimant relate to liability; these were not matters for the remedy hearing.

20. Admissions by the respondent: questions about why the respondent made admissions when it did (and not any earlier) were not issues for us to consider as part of the remedy hearing.

21. Failure to promote the claimant during his working career: this was not identified as an allegation in the list of issues which was agreed by the claimant, and was not raised as an issue either at liability or remedy stage.

22. Other matters not referred to in the judgment: the claimant suggests that other complaints made by him were not properly considered in the remedy jdugment, for example, being challenged about leaving water on a table, remarks about medication and being told to sit away from the team. We found these acts did not amount to unlawful discrimination, so compensation does not flow from them, and we had to ensure that the compensation we awarded did not include losses from non-discriminatory acts. When assessing injury to feelings, we took into account that the claimant's feelings had been injured by other non-discriminatory matters, including these points. We also took these matters into account when assessing the chance that the claimant's psychological condition could have developed even if he had not been subject to discrimination (paragraphs 72, 121, 175).

23. Notice pay: we highlighted that there was some uncertainty about whether the claimant had been properly paid for his notice period, and suggested that the respondent might want to look into this (paragraph 208). This was not an issue we could determine at the remedy hearing, as the claimant did not make any complaint about notice in these three claims.

24. Interim relief: this was not a matter for us at the remedy hearing (the claimant did not bring any claim entiting him to claim interim relief).

25. Respondent's internal investigation: we made findings about the internal investigation in our liability judgment. It was not directly relevant to our remedy judgment.

26. In conclusion, the application for reconsideration does not raise any procedural error or any other matter which would make reconsideration of the remedy judgment necessary in the interests of justice.

27. The claimant's application for reconsideration is therefore refused under rule 72(1).

Employment Judge Hawksworth

Date: 11 May 2023

Reasons sent to the parties on

12 May 2023

For the Tribunal office