



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

Claimant

Dr Naigui Shang

Between

&

Respondent

Surrey Nanosystems Limited

Before

Judge M Aspinall
(sitting as an Employment Judge)

Appearances

None

APPLICATION FOR RECONSIDERATION Decision

1. Having reminded myself of the applicable law, legal principles and on reading the Claimant's application and Respondent's submissions carefully, I refuse the application for reconsideration under Rule 72(1) as I find there to be no reasonable prospect of the original judgment being varied or revoked.

Reasons

Background

2. I heard this claim over two days, 15 and 16 December 2022. Although I had intended to be able to deliberate, consider the evidence, and to deliver my decision orally on 16 December 2022, this was not possible.
3. I delivered my reserved decision in writing on 29 December 2022. This was sent to the parties, by email, on 15 February 2023.
4. By a letter attached to an email (23:42 on 28 February 2023) the Claimant applied – at length – for a reconsideration of my decision.
5. On 1 March 2023, I issued Case Management Orders seeking the written submissions of the Respondent in relation to the Claimant's application for reconsideration. The Respondent provided written submissions in a document sent to the Tribunal by email (08:32 15 March 2023). These were sent to me, by the Tribunal Clerk on 29 March 2023.
6. On the basis that the Claimant's application was very wide in scope and because I was unclear, from his application, on what legal basis he was challenging my original judgment; I considered it appropriate to set out my initial view of his application in my orders of 1 March 2023 (pursuant to Rule 72(1)).

Legal principles

7. In *Outsight v VB Brown* 2015 ICR D 11, it was held that the power of the Employment

Tribunals to reconsider a decision is a broad discretion that must be exercised with judicial care:

“which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation”.

8. Any application for reconsideration is to be carefully considered to avoid the possibility for the party making the application (the Claimant in this case) to have a “second bite of the cherry” – which is to say that it cannot simply be that a reconsideration application can be used for an unsuccessful litigant to ‘have another go’.
9. Lord McDonald in *Fforde v Black* UKEAT/68/80 said:
“Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case, where something has gone radically wrong with the procedure involving a denial of natural justice or suchlike.”

My decision

10. In his opening paragraph the Claimant states that he “can not agree with your judgement (sic).” In his closing paragraph, aside from his editorial comments about the quality of my judgment, he asks for more time to comment on and “argue this judgement” (sic).
11. I am satisfied that what he is seeking is an opportunity to relitigate his claims. He is seeking that second bite of the cherry.
12. Put most simply, I reviewed all the relevant evidence and the evidence to which my attention was specifically taken by one or other party or witness. On doing so I found that the evidence of the Respondent and their witnesses was of greater credibility and had more evidential value and weight. That was a decision that I was entitled to make, having read, seen and heard the evidence. I had also seen, heard and observed the witnesses as they gave evidence.
13. The Claimant, I accept, does not like the conclusions that I reached but that does not mean that they are wrong. He would have reached a different conclusion – since he would otherwise have desisted in bringing his claim. Again, that does not undermine the decision I made.
14. As I made clear in my 1 March 2023 orders (paragraph 3.5):
“The necessary issues for the Tribunal to address in this claim were set out at paragraph 4(a-h) of my reserved Judgment and these were issues to be objectively assessed according to the evidence available; the assessment of what weight I attached to any piece of evidence was one for me to properly determine based on the nature of that evidence, any corroborative evidence that supported it, and its relevance to any of the issues.”
15. Having reviewed my reserved judgment, I am satisfied that the Tribunal did address the issues set out in its own paragraph 4. I am also satisfied that, despite being very lengthy – and despite requiring a considerable amount of my time and detailed submissions from the Respondent – the points raised by the Claimant in his application of 28 February 2023 do not go to the heart of any material findings in relation to the

issues it was necessary for me to decide.

16. I do accept that at paragraph 63 of my reserved judgment, I inadvertently referred to *S-VIS Vantablack* when, in fact, it had been *CVD Vantablack*. However, that mistake in the name of a product does not undermine the basic finding that the work which the Claimant had been doing, in research and development, had moved on and was now in fields for which he was unsuitable. In fact, that the requirements for employees of the Respondent to carry out work of the particular kind that the Claimant did had ceased, diminished, or were expected to do so.
17. I am satisfied that the points raised in the application of the Claimant amount to little more than dissatisfaction that the decision was adverse to him; that is not a lawful basis upon which to reconsider my judgment.

Submissions from the Respondent

18. In response to my orders of 1 March 2023, the Respondent took the opportunity offered to them of making submissions in relation to the Claimant's application for reconsideration.
19. I took those submissions into careful account as I considered each aspect of the Claimant's application.
20. At the close of their submissions, the Respondent seeks an order for costs against the Claimant in relation to the reconsideration application. Such costs are not specified and so I decline to make such an order.

Judge M Aspinall on Sunday, 26th March 2023

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