



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr T Cowland

**South Western Ambulance
Service NHS Foundation Trust**

Employment Judge Matthews

Judgment on Application for Reconsideration

Acting in accordance with rule 72 of the Employment Tribunals Rules of Procedure 2013 (the “Rules”) the Employment Judge refuses Mr Cowland’s application for a reconsideration of the Judgment sent to the parties (with Written Reasons) on 20 April 2023 (the “Judgment”). The Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked.

Reasons

Introduction and applicable law

1. The Employment Judge must consider this application by reference to rules 70, 71 and 72 of the Rules. So far as they are applicable, they read as follows:

“70 Principles

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.

71 Application

Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

72 Process

(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.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the 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."

2. Judgment as to remedy was given orally on 2 March 2023. On 16 March 2023 the Judgment was sent to the parties. Mr Cowland requested written reasons and these were sent to the parties on 20 April 2023. On 2 May 2023, within the applicable fourteen day time limit, Mr Cowland's application for reconsideration was received by the Employment Tribunals.

Conclusions

3. Mr Cowland's application is set out in a document entitled "Claimant's Remedy Reconsideration Application" accompanied by a second document entitled "Claimant's Schedule of Loss for reconsideration following the Remedy Hearing Written Reasons".

4. The background is this. The Tribunal gave Judgment as to liability after a hearing on 12-15 December 2022. Whilst several of Mr Cowland's claims were dismissed, the Tribunal found that Mr Cowland was subjected to discrimination arising from his disability by reference to sections 15 and 39 of the Equality Act 2010. In short, Mr Cowland was dismissed because of something arising in consequence of his disability and the Respondent had not shown that the dismissal was a proportionate means of achieving its legitimate aim. This was also the basis for a finding of unfair dismissal. The core of the Tribunal's findings in respect of the discrimination arising from disability and unfair dismissal was that the Trust had not done enough to focus on possible redeployment opportunities for Mr Cowland before dismissing him. In considering remedy, therefore, one of the issues it was necessary for the Tribunal to form a view on was what would have happened, had the Trust focussed on redeployment opportunities.

5. Turning to the points Mr Cowland raises in his application for reconsideration.

5.1 Mr Cowland raises an issue of fairness. Mr Cowland says that he was prevented from being able to give formal evidence and from being able to put a robust argument forward at the remedy hearing. It is the case that the Tribunal did indicate in case management orders that evidence from one witness for the Respondent together with cross examination by Mr Cowland was likely to be sufficient for the Tribunal to form a view on what would have happened had the

Trust achieved its legitimate aim by proportionate means. In so indicating, the Tribunal took into account its observation from the liability hearing that Mr Cowland thoroughly prepared his questioning of witnesses and dealt with it ably and to the point. This proved to be the case again at the remedy hearing. Mr Cowland conducted an extensive cross examination, which, together with the Trust's evidence, gave the Tribunal additional information on which to deal with the particular "what would have happened" issue. Evidentially, therefore, the Tribunal was satisfied it had what it needed following an airing of the issues by both sides. As far as robust argument was concerned, Mr Cowland brought well prepared documentation to the Tribunal and spoke to that and the evidence confidently and comprehensively. Any suggestion that a party feels that an aspect of a hearing was unfair to that party is treated by the Tribunal with the utmost seriousness. However, whilst we regret that Mr Cowland may feel that way, in the circumstances the Employment Judge does not agree that Mr Cowland's concern is well founded.

5.2 Mr Cowland's substantive point on the remedy judgment is that he *"disagrees with the view of the Tribunal that simply waiting a further 6 months would have made the Respondent discriminatory action proportionate."* Mr Cowland goes on to point out that *"as identified by the Tribunal in their original Judgement there were multiple, less discriminatory options available to the Respondent"*. Mr Cowland then sets out detailed reasons why the most appropriate and likely outcome of the Trust using proportionate means to achieve its legitimate aim would have been to assist him in securing a band 6 non-patient facing role. Mr Cowland provides a schedule of loss along those lines. The Tribunal's conclusion, set out in its Judgment, was different. This followed evidence and wide ranging argument on a number of possible outcomes. Throughout the proceedings, the Tribunal's observation was that the employment relationship was fundamentally broken for reasons not connected to the discriminatory act found. Any process followed, having addressed the discriminatory issue, would, on an assessment of the probabilities, have led to a non-discriminatory dismissal. Whilst the Employment Judge notes that Mr Cowland disagrees, that was the Tribunal's conclusion having weighed the evidence.

6. Accordingly the Employment Judge refuses the application for reconsideration pursuant to Rule 72(1) because there is no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Matthews
Dated: 24 May 2023

Judgment sent to the parties on 08 June 2023

For the Tribunal Office