



EMPLOYMENT TRIBUNALS

Claimant: Mr. Malcolm
Respondent: Felixstowe Dock & Railway Company

DECISION ON RECONSIDERATION APPLICATION

Held at: Bury St Edmunds Employment Tribunal (on the papers)
On: 13 June 2023
Before: Employment Judge Mason

DECISION

The Claimant's application for reconsideration of the judgment sent to the parties on 19 May 2023 ("the Judgment") is refused. It is not necessary in the interests of justice to reconsider the Judgment; there is no reasonable prospect of it being varied or revoked under Rule 70 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

REASONS

1. The power to reconsider a judgment is given by rule 70 of the Employment Tribunals Rules of Procedure which provides: "*A Tribunal may ... on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so ... Rule 71 provides: 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) ... and shall set out why reconsideration of the original decision is necessary.*"
2. The Employment Tribunal can therefore only reconsider a decision if it is necessary to do so "*in the interests of justice.*" A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a "*second bite of the cherry*" and the jurisdiction to reconsider should be exercised with caution. A Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' (the overriding objective in Rule 2).

3. Following a Public Preliminary Hearing (in person) on 15 May 2023 , the Tribunal:
 - 3.1 dismissed the claim of unfair dismissal as it was presented out of time and it was reasonably practicable to present it in time:
 - 3.2 dismissed the claim of disability discrimination as it was presented out of time and it was not just and equitable to extend time.
4. Full written reasons for that Judgment were sent to the parties on 19 May 2023.
5. On 1 June 2023, the Claimant wrote to the Tribunal as follows:

“From now on I will be representing myself to confirm. Unfortunately, I cannot meet the costs to keep Bob Marsh as my representative in my case any further. Due to this I will be sending across my reconsideration request around the tribunal judgment provided on 19th May 2023, with the end of the 14-day period being 2/6/2023 to get the reconsideration request in by. I have new evidence which I believe should be considered in the interest of justice. This is also supported by WhatsApp messages and emails in July & August 2022. I will send this over tomorrow with my own additional points around the judgment reasons.”

On 2 June the Claimant sent a further email attaching a reconsideration request and various attachments.
6. The Claimant’s Reconsideration request focuses on two areas or grounds:
 - 6.1 The Claimant says:

“I have further evidence from a colleague around the tribunal claim process, which is attached to the same email, as well as the communications between us during those periods. I hope this shines a light on the fact that I was unable to deal with the tribunal process due to it being a huge trigger point for all I had been through, and that it was not reasonably practicable for me to get the claim submitted in time by myself, hence the reason I really needed support from others. My wife has also added further detail to her previous statement supplied at the preliminary hearing, as it is extremely important to show further context in what I was going through. When I think back to last year a lot of it was a blur, and I think it is extremely important not to minimise the impact on my mental health, this is a serious stigma with men, and it is something incredibly difficult to face or to talk about”
 - 6.2 The Claimant disagrees with some of the conclusions in the Judgment.
7. With regard to the evidence submitted with the Claimant’s reconsideration request, there was every opportunity for the Claimant to adduce this at the hearing. This is not new evidence in the sense that it has only come to light after the hearing. This is evidence which could have been made available for use at the hearing and it is not in the interests of justice to give a party a second bite of the cherry because they failed as a result of oversight or miscalculation in their litigation strategy to adduce all the evidence available at the original hearing.
8. With regard to the Claimant’s disagreement with some of my conclusions, this is not a valid reason for reconsidering my judgment. The Claimant is seeking to reargue points which have already been fully considered and the Claimant is effectively asking for a second hearing of these issues. It is in the public interest that there should be finality in litigation and the interests of justice apply to both sides. As the EAT decided in **Fforde v Black EAT 68/60**, the interests of justice does

not mean “*that in every case where a litigant is unsuccessful he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. The 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 something of that order*”. This is not the case here.

9. In conclusion, I refuse the application for a reconsideration because there is no reasonable prospect of the Judgment being varied or revoked. The purpose of a reconsideration application is not to provide a hearing at which the same evidence can be rehearsed with different emphasis or further evidence adduced which was available (or could have been made available) at the time.

Employment Judge Mason

13 June 2023

Sent to the parties on:

26 June 2023

For the Tribunal Office:

GDJ